Hawaii Coastal Zone Management Program

technical supplement 13

Guidelines For The Hawaii CZM Law

GUIDELINES FOR THE HAWAII CZM LAW

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The desire for greater specificity of the objectives and policies was based in part on the possibility that Hawaii's CZM Program would not be approved by the federal Office of Coastal Zone Management (OCZM) due to the vagueness of the objectives and policies of the Hawaii CZM law. However, as indicated in the Senate committee report, there is a strong suggestion that the Legislature also saw a need for more specificity beyond what might or might not be required by the OCZM.

Based on this legislative mandate, the DPED continued to negotiate with the OCZM as to whether or not Hawaii's CZM Program was acceptable without guidelines. At the same time, the DPED and its advisory groups began to consider the need for guidelines which would provide an "elaboration of policy". The twofold strategy--negotiating with OCZM for approval of a program lacking guidelines and initiating discussions on the need for guidelines with the CZM advisory bodies--was developed by the DPED in part because of uncertainty over the passage of guidelines by the Legislature sometime in the future.

OCZM initially requested that the DPED prepare a "networking" management system as part of the Hawaii CZM Program. The DPED at that point indicated that they were not in favor of using such a system. OCZM was reluctant, in the absence of this network, to approve the Hawaii Program without some provision for greater policy specificity. "Guidelines" were proposed as a way to provide that specificity.

As the DPED developed its CZM Program, the need to reflect the network of existing authorities became clear. It was eventually determined that further guidelines would not be a required part of Program approval if the State developed a "networking" approach in its management document. A "networking" approach meant that the State had to incorporate existing legal and regulatory mechanisms as part of the Hawaii CZM Program management system. Such an approach was possible given the language of the CZM law which made the objectives and policies binding on all agencies in the state. DPED accepted the alternative shortly thereafter certified by the OCZM as meeting the requirements for policy specificity.

A Brief Summary of the Guidelines Development Process

In the summer and fall following passage of the Hawaii Coastal Zone Management Act of 1977, the DPED concentrated on the preparation of the Hawaii's CZM program "306" submission document and draft Environmental Impact Assessment, as the continuation of federal funding for the HCZM program was contingent on the acceptance of those documents. It was thus unable to devote considerable attention to the formulation of draft guidelines.

As the 1978 session approached, it was clear that a guidelines package would not be completed. At this point, the Statewide Citizen's Forum (SCF), a statewide citizen advisory body to the HCZM Program, assumed the principal role in developing guidelines. As the CZM advisory group with the broadest community representation, the SCF

felt that it could provide a good setting for the consideration of possible guidelines and requested the DPED to prepare material for the body to review. In response to this request, the DPED instructed its CZM consultants to address the matter of guidelines. The Pacific Urban Studies and Planning Program (PUSPP), as a consultant to the HCZM Program, responded by preparing a series of discussion papers on guidelines in late 1977.

PUSPP, at an early stage, defined its role as one of stimulating discussions, suggesting potential guidelines, and facilitating recommendations made by the various advisory bodies. PUSPP did not intend to finalize "solutions" through the discussion papers. The papers which emerged were constructed so as to raise as many questions about the objectives and policies of Chapter 205A, HRS, as possible.

The role PUSPP assumed sometimes meant anticipating problem areas on the basis of unanswered questions rather than on established empirical evidence. It further meant considering subjects which are covered by other legal authorities. No attempt was made to anticipate how a final set of guidelines might look or how the Legislature might respond to them. Instead, each discussion paper covered as many problems and policy areas as possible, given staff and time constraints.

Eight discussion papers were prepared for review by the SCF and other HCZM advisory committees. The first paper focused on the general nature of guidelines, their purposes and types. The seven subsequent papers focused on each of the resource/management areas provided for in the CZM law.

The seven discussion papers followed a generalized format. First, the objectives and policies were reviewed for their internal ambiguity or inconsistency. If the objectives and policies considered together were determined to be ambiguous, confusing, or in need of greater clarity, then guidelines were suggested to remedy the problem. Following this general evaluation, attention was turned to each of the policies of the law to see if more specificity or "concreteness" could be added by developing a guideline addressing the policy.

When such policies were identified, an analysis of specific ways in which policy specificity might be achieved was undertaken. This analysis took the form of a commentary, followed by a guideline or a set of alternative guidelines. The commentary functioned as a synopsis of the rationale underlying the guideline(s) which followed. The overriding purpose was to clearly state the problem or management purpose of the guideline(s).

Each of these papers were then presented to SCF for review and comment. The SCF met every two weeks during the legislative session to discuss guidelines (January through April), and once a month when the legislative session ended. Although written comments were requested by the PUSPP/CZM staff, most of the comments

received were obtained orally at the meetings of the SCF. Based on the written comments and SCF discussions, the papers were revised and resubmitted to the SCF for review. PUSPP did not receive written comments from the other advisory committee to the DPED.

In the summer of 1978, the PUSPP staff prepared "A Compilation of Draft Guidelines for the Hawaii CZM Law." (See Section II). This compilation was intended to be a common set of suggested guidelines which would be the subject of decision-making by the DPED and its advisory groups. The compilation was essentially a revised set of all the guidelines which were contained in the discussion papers, along with a few others which were developed during Forum discussions.

Shortly after the compilation was distributed to the various CZM advisory groups, the DPED reviewed the set and decided to streamline the guidelines package. The streamlining took the form of deciding which guidelines were most appropriate for incorporation in Parts I and II of the CZM Law, which were best pursued through legislative means such as resolutions, and which were best eliminated. Based on these decisions, a "Guide to Guidelines" was prepared for review.

The "Guide to Guidelines" (see Section III) was presented in the form of a matrix indicating where the various guidelines in the compilation would be most applicable. In late August, draft guideline bills were prepared for review by the various CZM advisory committees. These guideline bills were based on decisions reflected in the Guide to Guidelines.

Two separate bills were prepared; one relating to Part I of the CZM law, the other relating to Part II. A decision was made to keep the draft bills of Part I separate from those of Part II, as the responsible agencies in these sections differed. In Part I, guidelines, if enacted, were to apply to "all agencies". In Part II, guidelines were to apply only to the county SMA authorities. It was felt that a merging of the two working drafts would create confusion and make it difficult for advisory committees to review the content of the guidelines. These drafts were used as a basis for subsequent discussions of the proposed guidelines.

The issues related to the establishment of guidelines are still being examined and discussed among the CZM program staff and advisory groups. At this time, it is difficult to say which guidelines, if any, will ultimately be submitted to the Legislature.

Major Guidelines Issues

A number of conceptual issues surfaced during the development of the draft guidelines. These issues, which have had and will continue to have a significant impact on what will finally be submitted to the 1979 Legislature, are summarized below in order to familiarize readers with the kinds of debates which have taken place with respect to the guidelines.

One issue which has consistently been raised involves the necessity of guidelines. Environmentalists and community groups maintain that guidelines are essential to the effective implementation of Hawaii's CZM program. However, various county planning directors, state agency spokesmen, and business representatives view guidelines as being unnecessary, and have advised the DPED against submitting them to the Legislature. They argue that existing legal and regulatory authorities are sufficient for carrying out the objectives and policies of the HCZM Act of 1977.

A second area of controversy concerns differing interpretations of the term, "guidelines", an issue involving as yet unresolved questions of legislative intent. Arguments have been made both in favor of, and in opposition to the establishment of guidelines which are advisory, rather than mandatory in nature. However, because the meaning of the term must be derived from the intent stated in legislative committee reports, which themselves do not specify a definition, these questions have not been settled.

A third issue involves the content and format of the guidelines. The current law reflects the choice made by the Legislature that the guidelines be written in statutory form as part of Chapter 205A, Hawaii's CZM law. Opponents of this choice argue that the guidelines should be presented in another format such as through legislative resolution or as amendments to other laws, so that they can be more easily amended to respond to new or changing conditions and concerns. Guidelines could also be adopted as agency rules and regulations if the legislature were to so authorize the DPED.

The fourth issue involves the timing of the guidelines. Some parties supportive of the establishment of guidelines have at the same time expressed concern that the guidelines could, in the long run, prove to be in conflict with other plans. Their primary concerns focused on the "Priority Directions", an element of the Hawaii State Plan which is being reviewed and revised, and not scheduled to become effective until May 1979.

The resolution of these conflicts is primarily a matter for the State Legislature. The DPED has been mandated to submit a set of guidelines to the Legislature for consideration in 1979. Any changes in this schedule should be made by the Legislature. Similarly it is more appropriate that issues pertaining to the content, form, and potentials for conflict between the guidelines and any other state and county plans be resolved by the Legislature at the time the guidelines are presented to it for review.

Organization and Purpose of this Report

The contents of this report represent a documentation of the process by which the guidelines proposed for Hawaii's CZM program were developed. The order in which its four sections appear is intended to reflect the process.

Section One contains a discussion of the variety of purposes and forms guidelines may take, as well as an analysis of the necessity for establishing guidelines in the resource/management categories of Hawaii's CZM law. Included in this section are the revised versions of the eight discussion papers which were prepared for the Statewide Citizens Forum. The first of the discussion papers focuses on the nature of guidelines. It is intended to illustrate the broad range of guidelines which can be formulated and to create a common framework for the discussion papers which follow it. The remaining seven papers deal with the categories of objectives and policies outlined in the Hawaii CZM Act of 1977 including historic resources, economic uses, scenic and open space resources, managing development, coastal hazards, coastal ecosystems, and recreational resources.

Section Two contains a compilation of the guidelines outlined in the eight discussion papers. This set of guidelines differs from those outlined in the papers only in that the explanations accompanying each guideline have been deleted. This compilation was prepared for use by the members of the HCZM program staff and advisory groups during their discussions of the guidelines.

Section Three is the product of discussions between the staff of the DPED and its CZM consultants and represents an attempt to separate the guidelines into four categories. The groupings were based on the actions recommended by DPED with respect to each proposed guideline, including:

1) Adopting the proposal as a guideline in part I of the HCZM Act of 1977; of Chapter 205A or of the Hawaii CZM Law.

2) Incorporating the proposal into those sections of the HCZM law directed toward SMA authorities;

3) Addressing the proposal through other statutory or non-statutory means, such as legislative resolution; and

4) Postponing discussions of the proposal.

This "Guide to the Guidelines" also provides a brief rationale for each recommendation.

Section Four contains two drafts of suggested amendments to the Hawaii CZM law. One of these drafts focuses on Part I of the law, the other on Part II. They are based on seven categories contained in the "Guide to the Guidelines".

SECTION I

DISCUSSION PAPERS

Discussion Paper #1
Guidelines for Hawaii's Coastal Zone Management Act

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This is the first in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Act (Chapter 205A, Hawaii Revised Statues). The papers are prepared as a respose to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Hawaii's Coastal Zone Management Act

What does the term "guideline" mean? What are "guidelines", what form should they take, and how should they be written? These questions must be addressed before any specific proposals can be examined.

This paper discusses the general nature of "guidelines", within the limits imposed by Chapter 205A though some additional possibilities are presented. It is suggested in this paper that part of the reason that the questions arise is that there are at least three general types of guidelines and at least four mechanisms for activating such guidelines. Only if these considerations are understood can progress be made in formulating a useful set of guidelines.

Types of Guidelines

There are at least three types of guidelines that have been suggested in the discussion of the term. While almost everyone would agree that the function of guidelines is to provide greater detail to the "objectives and policies" of the Hawaii Coastal Zone Management

(CZM) Act, there are considerable differences over the areas which need greater detail and the methods of providing such detail.

First, there are definitional guidelines which respond to what some see as vague terms in both the objectives and policies of the HCZM Act. What is meant by an "adequate supply" of shoreline parks? What is meant by requiring "replacement" of coastal resources having "significant" recreational value?

Secondly, there are policy guidelines which clarify the intent rather than the language of the objectives and policies in the Hawaii CZM Act. The Act can be seen as providing a three-leveled set of standards. At the highest and most general level are the "objectives", which are broadly stated program goals. At the next level are "policies" which are more specific and begin to provide some standards for assessing action in the CZM area. Finally, there are policy "guidelines" which are intended to be even more specific, providing detailed standards and priorities. Some maintain that while there are objectives, policies and guidelines for the SMAs (Part II of Ch. 205A contains the guidelines), there are only "objectives" and "policies" for all other agencies. Thus, for these agencies, the "guidelines" level is missing. These people maintain that the legislature intended to create policy guidelines to fill the gap.

The statute, however, does not fit precisely within this model. In some cases, most notably in the area of recreational resources, the policies are quite specific and further policy guidelines may not be needed. (There may, however, still be a need for definitional guidelines). In other areas, the policies do fit within the model and further guidelines may be needed. The statutory format, however, does not make the need for guidelines to amplify objectives and policies clear.

The model for policy guidelines also assumes that there is a direct correspondence between the objectives and policies of the Act. That is, it assumes that each policy clearly provides greater detail to some part of the objective. In the area of historic resources for example, the assumption is questionable. Policy (2)(A), "Identify and analyze significant archaeological resources," is not clearly a derivative of the objective, which is to "protect, preserve, and where possible, restore those natural and man-made historic and pre-historic resources...that are significant in Hawaiian and American history and culture." The use of the term "archaeological" in the policy shows minimal correspondence with the objective unless one assumes that "archaeological" means "natural and man-made historic and pre-historic resources that are significant in Hawaiian and American history and culture," which is not the common definition of the term.

A third type of guideline is directed toward agency procedures. These procedural guidelines function to identify management jurisdictions, establish rules for a management process, or encourage agencies to perform certain tasks. They are intended to effectuate changes in management "processes".

In summary, there are three types of guidelines which could be adopted as part the the HCZM Act: definitional, policy and procedural guidelines. Each has a different function and each would require different types of problem identification (i.e. areas in need of greater specificity) and analysis (i.e. what language is really needed to provide that specificity).

Definitional guidelines may be understood to be guidelines which provide specificity to the ambiguous terms used in the Act. The purpose of such guidelines is to make those terms workable from a management perspective and limit interpretation of the objectives and policies. Policy guidelines may be defined as guidelines which provide priorities, criteria and standards in support of the objectives and policies of the Act. Their purpose is to assist decision makers by adding greater specificity in terms of the ends to be accomplished. Finally, procedural guidelines may be seen as guidelines which modify the management "process". Such guidelines may increase public participation, minimize the burdens placed on private parties by the government, or establish minimum and uniform levels of program achievement.

Activating Guidelines in the Network of Land and Water Management

There are at least four ways in which guidelines may become activated in the network of land and water management. Two major ways, which have received considerable attention since passage of Hawaii's CZM Law, are based on the two-tier management structure provided for in the Act. In addition, there are two other ways of activating guidelines in the coastal land and water management system in which it will be discussed.

Activating Mechanism 1: Guidelines to All Agencies by Legislature

The first of the two major mechanisms provides for guidelines which would be enacted by the legislature. These would be binding on all state and county agencies. The law already contains broadly stated "objectives" and more specific "policies". Presumably, the guidelines would add an additional layer of specificity. There are currently no guidelines of this type in the statute but there is an

"example" in the policies for recreational resources. (see Sec. 205A-2 (C)(1)(B) under Recreational Resources. The guideline-like provisions are contained in (i) - (viii) of that section and are quoted later in this paper.)

Activating Mechanism 2

The second mechanism provides for guidelines which would be enacted by the Legislature and which would apply only to the agency issuing the SMA permits. Such guidelines would provide explicit policy directions to the SMA agency to use in reviewing permit applications or which would provide standards concerning the process to be employed in the review of permits. This mechanism is already used in the Hawaii CZM Law (Section 205A-26, HRS), to provide policy directions to the SMA agencies.

Activating Mechanism 3

The second type of guidelines could also be adopted by a County Council (rather than the Legislature) and applied to the agency reviewing and/or granting SMA permits. Guidelines may be general procedural rules for the SMA agency or explicit policy standards and priorities. The major differences between mechanism 2 and 3 are that the guidelines may be adopted by the County with or without legislative mandate, and, that these guidelines may have different statutory functions.

Activating Mechanism 4

There is a fourth mechanism whereby guidelines may be activated in the coastal land and water management system. Guidelines could be adopted at the state level and applied only to state agencies. They could be enacted by the Legislature or promulgated by the Governor through the use of Executive Orders. Such an Executive Order might well be in a form similar to that used in setting up the Office of Environmental Quality Control.

The following chart provides a summary of the interrelationship between the three types of guidelines and the four types of activating mechanisms. As discussed, there are a total of twelve different types of guidelines which are possible from juxtaposing the types of guidelines with the way it can be activated in the system of coastal zone management.

Table 1
Guidelines and Activating Mechanisms
(Numbers refer to the paragraphs which follow explaining each approach.)

Activating Mechanisms	Type of Guideline: Definitional	Policy	Procedural
I. Applies to all state and county agencies and adopted by the State Legislature	(1) Definitional/All Agencies/ Legislature	(2) Policy/All Agencies/ Legislature	(3) Procedural/All Agencies/ Legislature
II. Applies to SMA authority and adopted by the State Legislature	(4) Definitional/SMA Authority/ Legislature	(5) Policy/SMA Authority/ Legislature	(6) Procedural/SMA Authority/ Legislature
III. Applies to SMA authority and adopted by the county councils	(7) Definitional/SMA Authority/ County Councils	(8) Policy/SMA Authority/ County Councils	(9) Procedural/SMA Authority/ County Councils
IV. Applies to state agencies and adopted by the State Legislature or the Governor	(10) Definitional/State Agencies/ Legislature or Governor	(11) Policy/State Agencies/ Legislature or Governor	(12) Procedural/State Agencies/ Legislature or Governor

1. Definitional/All Agencies/Legislature

Definitional guidelines could provide clarification of terms used in the objectives and policies which are either ambiguous or require a value judgement. For example, the "Economic Uses" policies use the term "coastal dependent development". A guideline might specify that:

(1) "Coastal dependent development" means any development whose economic viability is dependent upon a shoreline location. It includes but is not limited to harbors, aquaculture projects, and visitor industry facilities.

2. Policy/All Agencies/Legislature

Policy guidelines could provide priorities, standards and criteria for agency review of coastal activities. They add an additional level of specificity to the "policies" of Chapter 205A. One of the policies in that Chapter already seems to have such guidelines built into it and should serve as a model in formulating those guidelines. Section 205A-2(c)(1)(B) (Recreational Resources) contains the following guideline-like provisions:

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation

of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Encouraging expanded public recreational use of county, State, and federally owned or controlled shoreline lands and waters having recreational value;

(vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.

To illustrate further, the policies on Economic Uses could be strengthened by adding the following guidelines:

(1) Agricultural uses, especially sugar and pineapple, will be given the highest priority unless alternate uses are clearly in the best economic interests of the state.

(2) When presently developed areas cannot be feasibly used, direct all development into urban designated (but unused or not fully utilized) areas before using rurual, agricultural or conservation areas.

(3) In balancing the needs of environmental protection with the needs of economic development, close attention is to be given to the State Plan and related documents in assessing the importance of a particular activity to the State's long-term economic health.

All of the policies in Ch. 205A could be made more specific through the use of guidelines. Such guidelines would need to be enacted by the Legislature, presumably in the form of amendments to Ch. 205A and could be adopted at any time in the future.

3. Procedural/All Agencies/Legislature

Procedural guidelines could provide rules for the process by which actions in the CZM area are reviewed. These guidelines might require such procedures as public hearings, public notice with time for the agency to receive comments prior to taking any action with the CZM area, or agency documentation on the reasons for any action taken along with a statement on the probable impact of that activity on the coastal zone. Or they could provide requirements for other kinds of agency action in carrying out the program. This type is demonstrated in the statute:

> Sec. 205A-5 Compliance. Within two years of the effective date of this chapter, all agencies shall amend their regulations, as may be necessary, to comply with the objectives, and policies of this chapter and the guidelines enacted by the Legislature.

The statutory provision requires all agencies to carry out some specific task. Requirements might be in the form of record-keeping, public access to records, or specifying the functions of the lead agency under the CZM law (Sec. 205A-3, H.R.S.)

4. Definitional/SMA Authority/Legislature

Definitional guidelines already exist to some extent. Examples can be found in Sec. 205A-22 where such terms as "development", "shoreline" and "structure" are defined. This list could be supplemented at any time.

5. Policy/SMA Authority/Legislature

Policy guidelines could provide criteria for the issuance of an SMA permit. These are already contained in Sec. 205A-26(a) though this set could be added to at any time.

6. Procedural/SMA Authority/Legislature

Procedural guidelines could control the way in which the counties deal with actions in the SMA area. In terms of contents they could be much like the guidelines mentioned in category 1. It is one thing for the state government to write procedural guidelines applicable to all agencies (category 1), however, it might be seen as quite another thing to write procedural guidelines aimed only at county agencies. Procedures would seem to be a matter which would be more appropriately handled by the counties. This would allow the counties to tailor the procedures to fit their situation.

7. Definitional/SMA Authority/County Councils

Definitional guidelines are used by all counties. At a minimum they include the definition as to which county body serves as the SMA "authority". Again, adding to the definitions which counties have is a county option.

8. Policy/SMA Authority/County Councils

Policy guidelines could be adopted by the counties and would supplement the guidelines contained in Sec. 205A-26(a), H.R.S., by providing additional critieria for reviewing SMA permits. Section 205A-26(b) specifically authorizes these guidelines though it does not require them.

9. Procedural/SMA Authority/County Councils

Procedural guidelines may be adopted by county governments which control the SMA permit requests process. A number of these are already in existence as part of the various county SMA ordinances. The adoption of these guidelines would not need legislative authorization since this is within the power of county governments.

The counties might consider adopting additional guidelines which would simplify the review of SMA permit applications. Guidelines

relating to checklists and maps provide an example.

The checklist approach involves asking a series of questions, the answers to which demonstrate the effect a particular activity would have on a coastal resource. The mapping approach involves the identification of areas according to their sensitivity as resource areas. Either approach makes processing applications easier by eliminating from lengthy consideration developments which pose no threat to coastal values.

10. Definitional/State Agencies/Legislature or Governor

Definitional guidelines would be similar to those discussed in category 1, but apply only to state agencies.

The CZM Law speaks in terms of activating mechanisms 1 and 2, namely, those binding on all agencies and those binding on the SMA permit authority. However, for the purposes of enhancing the management of the coastal area, consideration of other possible uses of guidelines is desirable. For example, it may be important and helpful in some instances to require a certain agency to "identify and analyze" historic resources. But, if the guideline is not carefully worded, all agencies may be required to undertake this task. This could result in duplication and resentment.

11. Policy/State Agencies/Legislature or Governor

Substantive guidelines would be similar to those discussed in category 2 but again would apply only to state agencies.

The CZM Law speaks in terms of activating mechanisms 1 and 2, namely, those binding on all agencies and those binding on the SMA permit authority. It may be important to define some of the terms in the act using this approach when an area of exclusive state jurisdiction (like the offshore waters) is involved. Guidelines would then be directed only at state agencies.

12. Procedural/State Agencies/Legislature or Governor

Procedural guidelines would be similar to those in category 1 but would apply only to state agencies processing. Some parts of

the 1964 Executive Order setting up the Office of Environmental Quality Control are procedural and could be used as models.

Summary

The preceding discussion indicates the range of guidelines which may be activated in the system of coastal land and water management. It provides some basic discussion as to the general nature of guidelines so that a common understanding of the term may be achieved. The discussion is designed to clarify what is involved in developing a set of guidelines, what is required, what alternative mechanisms are available, and, what consequences can be anticipated. Specific guidelines depend on what areas are identified to be in need of greater specificity and what management actions and rules are determined to be most appropriate.

Discussion Paper #2

Guidelines for Historic Resources Management in Hawaii's CZM Law

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This is the second in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Historic Resources Management in Hawaii's CZM Law

> Historic preservation is both a medium for learning about those strands which continue in today's culture and a means for choosing out of that past, the significant physical artifacts and social concepts which we wish to retain as part of our physical environment.
>
> If we are to make our choices consciously we must develop understanding of that past, often through the remaining artifacts.
>
> To communicate what we have learned, the artifacts themselves will sometimes be the clearest and most direct means of interpreting the story.
>
> Historic preservation can also shape the quality of the environment we live in by preserving districts which impart a sense of human scale and a vitality of distinctive character. (p. 24)
>
> Department of Land & Natural Resources
> Historic Preservation in Hawaii 1976

The preservation of historic resources is important to the people of Hawaii. This goal is reflected in the management philosophies and practices of both State and County governments. The Hawaii State Legislature, in passing the Coastal Zone Management Act of 1977, not only reaffirmed a commitment to the management of historic resources, but also identified such resources as important to coastal environments and in need of protection. The objective of historic resources management in the coastal zone, as declared in Chapter 205A is to:

> Protect, preserve, and where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

In addition to the above objective, there are three general policies which are intended to provide the means for achieving the objective:

* Identify and analyze significant archaeological resources.

* Maximize information retention through preservation of remains and artifacts or salvage operations.

* Support State goals for protection, restoration, integration, and display of historic resources.

The purpose of this paper is to explore the objective and policies for historic resources management in the coastal zone with the intent of identifying the need for further guidelines, analyzing specific problems, and suggesting possible guidelines.

What follows are analyses of and suggested guidelines for the policies pertaining to historic resources management in the coastal zone. The analysis takes the form of a series of comments on each of the policies. Following the comments are suggested guidelines which reflect the specific problem areas. Both the comments and suggested guidelines are subject to review and debate as this is only a preliminary effort.

Policy (2)(A): Identify and analyze significant archaeological resources

Comment #1: There is an inconsistency between the objective and preceding policy for historic resources management.

The term, "archaeological resources," is not wholly consistent with the language of the objective which uses the phrase "natural and man-made historic and pre-historic resources." Technically, archaeological resources refers to artifacts and remains from pre-Cook days. But, post-Cook artifacts and remains should also be identified and analyzed if they are to be protected, preserved, and where desirable, restored--as called for in the objective.

There are two major ways to obtain consistency between the objective and policy. The first way would be for the Legislature to amend the policy to read: "Identify and analyze significant historic and pre-historic resources." A second way is for the Legislature to adopt a definitional guideline to clarify what is meant by archaeological resources. Such a guideline might be written in the following ways:

(1a)* Definitional Guideline: "Significant archaeological resources" are those historic and pre-historic resources that are within the meaning of "historic property" as defined in Section 6E-2(2), HRS and that are significant in Hawaiian and American history and culture.

(1b) Definitional Guideline: "Significant archaeological resources" are those historic and pre-historic sites and areas which are either on or eligible for the Hawaii Register of Historic Places or which are on the National Register.

Comment #2: The phrase, "identify and analyze," should be defined.

There are two general ways of interpreting "identify and analyze" in the context of planning and management. The first interpretation suggests that a survey and analysis of archaeological resources in the coastal zone should be conducted. The second interpretation is

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* Alternative guidelines prepared to accomplish the same purpose are denoted by the use of alpha characters which follow the number of the guideline.

that a procedure for the identification and analysis of archaeological resources should be established somewhere in the development review process. Such a procedure would help to ensure that archaeological resources were not destroyed when a development occurred. The phrase, "identify and analyze," needs clarification.

Definitional guidelines should not be considered independently of the way in which they would be activated in the network of coastal land and water management. Any attempt to define the phrase involves some notion of management purpose and structure. If, for example, "identify and analyze" were taken to be an inventory of historic resources, then, the problem arises of who would conduct the inventory and how will the inventory be used to achieve the goals stated in the objective? Should all agencies be required to conduct such a survey? Should the SMA permit authority be responsible for the task? Or, should the Department of Land and Natural Resources be required to do the work? There are pros and cons to each of these, suggesting that serious attention should be given to management purpose and structure in drafting definitional guidelines.

Interpreting "identify and analyze" to be a systematic survey and analysis of historic resources in the coastal zone may result in a yielding of valuable information to land use managers, developers and the general public. Oftentimes, the dearth of information about the potential historic or pre-historic value of a particular site leads to the destruction of resources and/or unnecessary expenditures for detailed site surveys on the part of developers. Information about the potential or existing historic or pre-historic resources in the coastal zone would be a major step towards their preservation, protection, restoration and general enhancement.

The question still remains, however, as to which agency or agencies should conduct the inventory and how such information should be maintained and used. Below are several procedural guidelines that operationally define "identify and analyze" and instruct various agencies to conduct the study.

(2a) Procedural Guideline: The appropriate agency or agencies, shall survey, map, and analyze the regional distribution of historic and pre-historic resources and maintain an updated information file so that interested persons can identify known sites and areas of historic and pre-historic significance and areas of potential discovery of significant archaeological resources.

(2b) Procedural Guideline: The Department of Land and Natural Resources, in coordination and consultation with, the County Planning Departments, shall survey, map, and analyze the regional distribution of historic and pre-historic resources and maintain an updated information file so that interested persons can identify known sites and areas of historic and pre-historic significance and areas of potential discovery of significant archaeological resources.

The first guideline, while interpreting "identify and analyze" to be an inventory of archaeological resources, does not specify an agency, thereby avoiding the issue of management structure. The second guideline instructs two particular agencies involved in historic resources management to conduct the survey. There are also other possibilities.

Interpreting "identify and analyze" to be a detailed examination of a particular site for the presence of historic and pre-historic resources could lead to the understanding that the process should be part of the development review and approval process. The procedure is integral to historic resources management since it is not possible to require mitigation measures without having accurate information as to the nature, location, value and physical characteristics of the resource. Procedurally, a requirement for site examination could be established within the SMA permit process. However, such a requirement would need to provide some flexibility since it should not be a requirement for all SMA permits. Examples of guidelines expressing this management strategy follow:

(3a) Procedural Guideline to SMA Authority: The Authority shall seek, in consultation with the State Historic Preservation Officer, where warranted, to determine whether historic resources are present on development sites before a permit is issued.

(3b) Procedural Guideline to SMA Authority: The Authority shall require, in consultation with the State Historic Preservation Officer, where necessary, detailed studies which survey, map, describe the physical characteristics of, and specify the mitigation measures undertaken to protect historic resources on development sites prior to taking action.

Comment #3: Federal agencies should be encouraged to comply with Federal Executive Order 11593.

Federal agencies were ordered by Federal Executive Order 11593 to survey their properties for historic and pre-historic areas and sites of national significance and to submit any such properties for consideration for listing in the National Register. The federal agencies in Hawaii have not fully complied with the Executive Order thus increasing the possibility of the destruction of such resources on federal lands. The lead agency responsible for the overall administration of Hawaii's CZM program should, perhaps, encourage federal agencies to comply with the executive order and to review any such finding for their importance to coastal zone management. A guideline requesting this action might be written as follows:

(4) Procedural Guideline: The State Historic Preservation Officer and the lead agency shall request all federal agencies controlling or leasing property in the State to report, within one year, the extent to which they have complied with Federal Executive Order 11593, the schedule for completing the survey of unsurveyed lands or waters, and, the findings of any completed work.

Comment #4: Further specificaiton of policy (2)(A) is needed in order to clarify procedures when historic resources are discovered on a site being developed.

There are presently no rules which provide for the preservation of historic resources when, and if, they are discovered during the process of development construction. Though ideally, sites should be surveyed before a development is commenced, guidelines may be needed in order to temporarily halt such development when unanticipated historic resources are discovered. Moreover, it may be important to institute expeditious procedures for site review and adoption of mitigation measures as it is unfair to require a lengthy or costly delay when construction is in progress.

Developing a guideline for this purpose is difficult as there are a number of problems which arise in and as a result of this process. For example, who will report the discovery of historic resources on a development site? It may be unreasonable to expect a developer to inform an agency of a discovery, without some sort of punitive sanction, since a finding might cost a developer time and money. The following are several guidelines which attempt to address

these general concerns. Each needs to be examined in terms of its overall impacts on the development process.

(5a) Policy Guideline: Where unanticipated archaeological resources are found, development should be halted or restricted in order to provide a sufficient opportunity to analyze the site and undertake reasonable mitigation measures.

(5b) Policy Guideline to SMA Authority: As a condition to granting permit approval, the SMA authority shall require the developer to immediately inform the authority of any unanticipated discovery of historic resources; whereupon, the authority shall make a determination as to whether further study of the site area is needed. The authority shall inform the public of any decisions.

Policy (2)(B): Maximize information retention through preservation of remains and artifacts or salvage operations.

Comment: A set of priorities need to be established to integrate information retention goals with competing land uses.

The policy, as presently stated, provides no guidance for decision making in a particular case. Faced with a situation where a property contains historic resources, a decision must be made as to whether to require preservation in the original site or to allow salvage operations, or how to resolve an irreconcilable conflict between the historic resources goals and competing development goals. A range of solutions is needed which allow for different results depending on the resources involved.

What follows is a suggested guideline which provides such a range. It is important to note that the assumption is made that, where possible, historic resources should be preserved at their original sites. The guideline might read as follows:

(6a) Substantive Guideline: In determining how best to preserve historic resources, all agencies shall adhere to the following criteria:

(i) Where the remains and artifacts can be preserved in their orginal site and where such preservation would provide the best setting for the resources, such display should be encouraged;

(ii) Where historic resources can be maintained in their original site, and, still, through siting and design requirements, allow for the development of the area, agencies shall make such requirements;

(iii) Where historic resources cannot be preserved and at the same time allow for development, all reasonable attempts should be made to salvage such resources and to provide for their display;

(iv) Where salvage is not possible, the decision as to whether to preserve the site or to allow development should take into consideration the following factors: (a) the importance of the development to the State's economy or to public health, welfare and safety; (b) the importance of the resource to our understanding of Hawaii's past; and, (c) the availability of similar sites, remains or artifacts in other areas.

Alternatively, a guideline which places more emphasis on preservation might read:

(6b) In determining when, and how best, to preserve historic resources, all agencies shall adhere to the following criteria:

(i) Preservation of the remains and artifacts in their original site shall be provided for unless:

(a) the development is of statewide significance and for the public good should proceed in spite of the presence of historic resources and;

(b) siting and design requirements cannot be used to allow both the development and the preservation of the resource to occur simultaneously.

(ii) Where development is allowed to take place, all reasonable efforts shall be made to salvage historic resources and to provide for their display.

(iii) Where substantially similar sites, remains or artifacts exist from or at other sites, agencies may consider that in deciding whether to preserve those historic resources.

All agencies shall consult with the State Historic Preservation Office when applying these criteria to a particular project.

Policy (2)(C): Support State goals for protection, restoration, interpretation and display of historic resources.

Comment #1: Agencies require guidance as to what "state goals" are for historic resources management.

Using Chapter 6E, HRS, the State's Historic Preservation law, as a reference would have the advantage of integrating the CZM program, with existing mandates. Creating a separate statement of "state goals" for the purposes of the CZM program might result in conflicting standards. The clearest statement of these goals if found in Section 6E-1, HRS, which states:

> The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its most important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural

property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans and programs in a manner consistent with the preservation and enhancement of historic and cultural property.

The guideline would then be stated as follows:

(7) Definitional Guideline: The "state goals" for historic resources management are stated in Section 6E-1, HRS, and all agencies will support those goals.

Comment #2: The State Historic Preservation Officer shall provide support to other agencies in implementing these goals.

The State Historic Preservation Office (in DLNR) is charged with implementing the historic preservation program. The CZM Act requires that all agencies aid in the implementation of such goals, but it is important that the State Officer charged with this program continue to exert strong leadership in order to insure that consistency is maintained in this program. It may therefore be appropriate to provide a specific link between the State officer and the agencies with CZM program responsibilities. A possible guideline might read as follows:

(8) Procedural Guideline: The State Historic Preservation Officer shall provide assistance to all agencies in the management of historic resources and shall maintain lists of resource persons and preservation methods.

It is also possible to provide that rules and regulations be promulgated by the Department in order to carry out these goals. The statutes allow the Department to promulgate rules under Section 6E03(12). The CZM Law allows for such a set of rules to be applicable to all agencies if these were brought into the CZM program through the guidelines. Such a guideline might be written as follows:

(9) Procedural Guideline: The Department of Land and Natural Resources shall promulgate rules to implement the historic preservation program in the coastal zone management area which shall be binding on all agencies.

These rules might, for example, specify certain minimum requirements for preservation, restoration and salvage operations, as well as specify when such operations would be required.

Comment #3: A mandate to explore incentives for private action in the preservation of historic resources should be a part of the CZM program.

The burdens placed on private parties by the historic preservation program could be substantially offset by providing incentives for such efforts. One obvious incentive would be in the form of tax advantages. Another might be in the form of design and siting adjustments permitted a developer in return for work in the historic preservation area. The mandate to explore these incentives should probably be directed to the agencies which have the most to gain from this program as well as to those which may be most affected by it. Such a guideline might read:

(10) Procedural Guideline: The State Historic Preservation Officer, the Department of Planning and Economic Development and the appropriate county agencies shall explore and work to establish a program of incentives to encourage private action in carrying out the historic preservation program.

Discussion Paper #3
Guidelines for Economic Uses Management in Hawaii's CZM Law

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This is the third in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Act (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Economic Uses Management in Hawaii's CZM Law

Hawaii's CZM Law provides for the comprehensive planning and management of activities in the coastal area. It includes objectives and policies relating to environmental resources and to the economic use of the coastal zone. And while the environmental purposes of the act must be read into this section, the following guidelines are intended to provide a guide to CZM's impact on business activities.

What follows is an analysis of the objective and policies relating to economic uses and an identification of areas which may be in need of guidelines. When such areas are identified, a guideline is suggested.

Objective (5): Provide public or private facilities and improvements important to the State's economy in suitable locations.

This objective and the policies which follow it do not appear to be in conflict. And, as the policies are at the level which is fairly specific, it may be inappropriate to attach many guidelines to the objective. There are, however, two aspects of the objective which are not covered by the policies. Guidelines may be appropriate

in these areas.

The siting of public facilities is not discussed in the policies which follow. Such facilities can have a significant impact on economic development. Therefore, agencies might be required to consider that impact.

(1) Policy Guideline: All agencies, in the siting of public facilities shall consider the effect that such facilities may have in encouraging or discouraging coastal development and shall insure that those effects are consistent with the objectives, policies and guidelines related to coastal development.

It is clear that coastal areas are a limited and precious resource as well as being the most ideal location of a number of commercial enterprises. The conflict between preserving the coast as a natural resource and using it as an economic resource is one of the principal reasons why the CZM Act was passed. Implicit in the objective and the accompanying policies is a compromise which attempts to reconcile environmental and economic interests. That compromise is the concept of "coastal dependent uses".

If the viability of an economic use depends upon using a coastal area it will be allowed to site itself in that area as long as its negative environmental effects are minimized as required by the other objectives, policies and guidelines. On the other hand, economic uses which are not dependent upon coastal siting are not to be located in that area. As stated above, this is implicit in the CZM law but it should perhaps be made explicit through a guideline.

(2) Policy Guideline: All agencies shall implement a policy of allowing only those economic uses which are coastal dependent to be sited in the coastal zone management area. All non-coastal dependent developments should be sited in inland areas.

Policy (5)(A): Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy.

Comment #1: The concept of "concentration" in the context of coastal developments should be better defined.

The concept of "concentration" is likely to be very controversial. Three alternate guidelines are suggested below. They do not provide all of the alternatives but are intended to suggest a range of possible uses for the term "concentration".

The first guideline assumes that the intent of the policy is to literally "concentrate" development. In other words, development is to be in "pockets" with the remaining coastline areas left open. Without some exceptions this could, however, create problems.

There are a variety of developments which could qualify as coastal dependent but which should not be placed side by side. One clear example would be the siting of an energy facility next to a hotel-resort area. Such siting would probably be a significant loss to the economic viability of the hotel-resort area. Therefore, a guideline providing a reasonable limitation on the "concentration" policy is appropriate. Such a guideline might be written as follows.

(3a) Policy Guideline: Coastal developments should be concentrated unless such concentration would result in significant detrimental effects on one or more of the developments in that area.

The second alternative guideline assumes that minimal emphasis should be placed on the term "concentration". To the extent that these guidelines are intended to encourage economic development this may be appropriate. It is worth noting that such development will still be subject to the other objectives and policies which are designed to assure protection of environmental resources.

(3b) Policy Guideline: Coastal development shall be concentrated only to the extent necessary to preserve scenic, open space, recreational, natural and historic resources determined to be significant under this program.

A third alternative would be to combine the above guidelines which would then somewhat de-emphasize the "concentration" notion while still preserving the integrity of the other objectives of the CZM law. Such a guideline might read as follows:

(3c) Policy Guideline: Coastal development shall be concentrated to the extent necessary to preserve scenic, open space, recreational, natural and historic resources determined

to be significant under this program unless such concentration would result in significant detrimental effects to one or more of the developments in that area.

Comment #2: There is a need to identify the mechanism by which the "appropriate areas" will be determined.

The areas which are "appropriate" for coastal development must be identified or alternatively some agreed upon state or county plan needs to be designated as identifying such areas. A number of solutions are possible. One is to have a specified state or county agency draw up a map designating these appropriate areas. This solution is both time-consuming and to some extent repetitive. A preferable solution would be to make use of existing plans which control land use. The two principal sources of such controls are the state planning process as implemented by the State Land Use Commission and the county planning process as implemented by each county government.

The State Land Use Commission (SLUC) controls the boundaries of all the land use districts in the State. With the recent change in the SLUC's operating basis from quasi-legislative to quasi-judicial the designation of these "appropriate areas" would be on a case-by-case basis, an approach not likely to yield the desired results.

The counties through their general plans and related documents and ordinances control the use of land. In the urban districts they are the sole authority. Having the county governments designate areas appropriate for coastal dependent development would provide developers with a single source of standards and permit consistent formulation and implementation of the county plans.

Three guidelines would be needed, one directed to the counties and two directed to all agencies.

(4) Policy Guideline: The Counties in their General Plans and related documents and ordinances shall designate areas appropriate for coastal dependent developments. Wherever possible consultation with affected agencies and individuals is encouraged. In designating these areas the counties shall use the objectives, policies and guidelines to determine which resources must be preserved and shall additionally preserve such additional areas as

are necessary to provide for future land management decisions.

(5) Policy Guideline: All agencies shall refer to the relevant county plan or related document or ordinance in determining the appropriate site for proposed coastal dependent developments.

(6) Policy Guideline: Once the counties have designated areas which are appropriate for coastal dependent development, no agency shall permit development outside those areas.

Comment #3: Some guidance should be given to agencies as to what is meant by the term "coastal dependent development."

The identification (or the process for identification) of developments which are "coastal dependent" should be contained in a guideline. A definitional guideline could enumerate those industries which will be considered coastal dependent. An example of such a guideline would be:

(7a) Definitional Guideline: "Coastal dependent developments" are harbors and ports, visitor industry facilities (including associated facilities), energy generating facilities and aquaculture operations.

The problem with this approach is that other developments which might in some way be coastal dependent might not be included. Some sugar cane and pineapple operations are coastal dependent in the sense that coastal areas are presently used for such operations. The fragile nature of that industry does not allow them to consider moving their operations to non-coastal sites. One way to solve this would be to enact a guideline such as:

(7b) Definitional Guideline: "Coastal dependent development" means harbors and ports, visitor industry facilities (including associated facilities), energy generating facilities, aquaculture operations and any other development for which it can be demonstrated that siting in the coastal zone is essential if

it is to be economically feasible; provided, however, that this shall not include housing in presently undeveloped areas unless the public good requires such siting or unless such housing is associated directly to a coastal dependent development.

The second part of the guideline places a burden of proof on the promoters of "any other development" to demonstrate "coastal dependency". The test is economic feasibility. This would allow sugar cane and pineapple to qualify but it might also allow many other developments, particularly housing to qualify. The developer of housing must also demonstrate that coastal siting is required in the public interest not just that housing is more economically profitable in the coastal area.

Comment #4: Some form of guidance should be given to agencies on the importance of certain industries to the State's economy.

This guidance comes from the State Plan. The guideline would then be as follows:

(8) Policy Guideline: All agencies shall use the State Plan as enacted by the Legislature in determining the importance of a particular development to the State's economy.

In addition, it may be important to highlight industries to be given special protection under the CZM guidelines. This protection might be given either in terms of specific industries or in terms of existing uses:

(9) Policy Guideline: Agricultural uses, especially sugar cane and pineapple shall be given the highest priority unless alternate uses are clearly in the long-term economic interests of the State.

(10) Policy Guideline: Where conflicts develop between existing coastal activities and new or proposed activities, priority shall be given to existing uses unless to do so would not be in the long-

run economic interests of the State and the County in which the use is located.

Policy (5)(B): Insure that coastal dependent development such as harbors and ports, visitor industry facilities and energy facilities are located, designed, and constructed to minimize adverse social, visual and environmental impacts in the coastal zone management area.

Comment #5: Additional guidance may be needed in terms of certain coastal developments.

This policy requires a balancing of economic development needs and the impacts of such developments. It may be important to provide additional guidelines with regard to the developments specifically mentioned in the policy because of the problems that they may involve.

(11) Policy Guideline: In the siting of harbors, consideration shall be given to the State Harbors Master Plan, the transportation needs of the affected area, the extent to which existing harbors fulfill those needs, and, the views expressed by potential users of such facilities.

(12) Policy Guideline: All agencies shall minimize the establishment of isolated hotel and resort developments unless such developments can be shown to be economically viable and not in conflict with the economic or environmental resource values in the area.

(13) Policy Guideline: In siting energy generating facilities, agencies shall consult the State Plan and allow coastal use only to the extent that the facility is in compliance with the energy resources goals of the state.

Rather than providing guidelines which would minimize environmental impacts it might be simpler to refer to the objectives, policies and guidelines provided for those other resources. Such a guideline might read as follows:

(14) Procedural Guideline: In minimizing the visual and environmental effects of such developments, agencies shall refer to the objectives, policies and guidelines relating to open space and scenic resources, historic resources, recreation resources and coastal ecosystems.

It also may be appropriate to require some explicit consideration of social and cultural impacts since this is the only section of the CZM Law where they are specifically mentioned. A general guideline might read as follows:

(15) Policy Guideline: The social and cultural impact of any development on a particular area shall be considered by all agencies and adverse impacts shall be minimized to the extent practicable.

The policy refers only to the impacts on the coastal zone management area. This should not be taken as meaning that impacts should simply be shifted to inland areas. If there must be impacts, the CZM law would make protection of the coastal zone the priority, but impacts should in any case be minimized.

(16) Policy Guideline: In minimizing the impacts of a development on the coastal zone, agencies shall avoid transferring those impacts to inland areas wherever possible.

Policy (5)(C): Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated when: (i) Utilization of presently designated locations is not feasible...(parts (ii) and (iii) are discussed below)

Assuming that the earlier guideline defining "coastal dependency" is adopted, Policy (5)(C) is fairly precise. There would not seem to be any need for additional guidance.

(ii) Adverse environmental effects are minimized

Adherence to the full set of CZM objectives and policies should be sufficient to handle the issue of adverse environmental effects. This policy may heighten the level of review which is required when development is allowed in areas which are undeveloped and not presently designated for development. There is no need for further specificity.

(iii) and, Important to the State's economy

This is adequately covered by earlier guidelines which require consideration of the State Plan.

Discussion Paper #4
Guidelines for Coastal Scenic and Open Space Resource Management in Hawaii's CZM Law

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This is the fourth in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory groups as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development of the University Community.

Guidelines for Coastal Scenic and Open Space Resource Management in Hawaii's CZM Law

Hawaii's coastal open space and scenic resources contribute to the quality of life in Hawaii and to the State's attractiveness as a visitor destination area. Coastal aesthetic amenities and open space, however, suffer from public and private develpments which are visually incongruous and result in loss of open space.

Hawaii's CZM Law contains an objective and a set of policies designed to provide for the comprehensive planning and management of open space and scenic resources in the coastal zone management area. This paper explores the objective and policies for scenic and open space resources management in the coastal zone and identifies areas that may need guidelines. When such areas have been identified, possible guidelines are suggested.

Objective (5): Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Comment #1: The term "coastal scenic and open space resources" should be defined.

Suggested definitional guidelines for "coastal scenic resources" and "coastal open space resources" are:

(1) Definitional Guideline: "Coastal scenic resources" shall include but not be limited to aesthetically significant view sheds, open space areas, view corridors, view planes and sites which encompass views of lands and waters within the CZM area.

(2) Definitional Guideline: "Coastal open space resources" shall include but not be limited to vegetated or landscaped lands in the coastal zone management area on which a minimum of man-made structures have been constructed.

Policy (3)(A): Identify valued scenic resources in the coastal zone management area.

Comment #1: The term "identify" should be defined and activated in the network of coastal land and water management.

There are two general ways that valued scenic resources can be "identified". The first suggests that a systematic survey and assessment of scenic coastal resources can be conducted in order to identify those which are "valued". This procedure would yield a register of scenic resources that could be used by developers, land use managers and community groups. The second would call for establishing a procedure for identifying valued scenic and open space resources in the development review process. Such a procedure, designed to ensure that valued scenic resources are not adversely impacted by development, would be conducted on a case-by-case basis.

The choice of a definitional guideline should not be made independently of the decision as to how it will be implemented in the network of coastal land and water management. If, for example, "identify" means the development of a register of scenic resources, then, the question arises as to who should develop the register and how the register will be used to achieve the goals stated in the objective? Should all agencies be required to conduct the survey pursuant to a general request by the Legislature? Should the SMA

permit authority be responsible for the tasks since the information would be invaluable in the process of development review? Such a register could be useful to developers, land managers, and the general public. Developers and land managers, for example, could use the register as a guide for making decisions about specific development proposals.

The question still remains, however, as to which agency or agencies should develop the register and how its use should be defined. Since there are a number of agencies with varied responsibilities for scenic resource management, the appropriate ones will need to be chosen. Moreover, since value judgments are involved in the identification of "valued scenic resource", public involvement would seem essential. Possible procedural guidelines that operationally define "identify" and instruct various agencies to conduct the study are:

(3a) Procedural Guideline: The _____ (agency or agencies) in consultation with the public and the development industry, shall survey, assess and map scenic coastal resources and maintain a register of such information so that members of the public can identify valued scenic resources in the coastal zone management area.

(3b) Procedural Guideline: The Department of Planning and Economic Development, in coordination and consultation with the County Planning Departments, and in consultation with members of the public and the development industry, shall survey, assess, and map scenic coastal resources and maintain a register of such information so that members of the public can identify valued scenic resources in the coastal zone management area.

Interpreting "identify" to be a detailed examination of a particular site for its intrinsic scenic value or for its value as an integral part of a larger scenic resource may lead to the understanding that the identification should occur in the development review and approval process. This procedure may be seen as integral to scenic resource management since it is not possible to require mitigation measures without having accurate information as to the nature, location, value and physical characteristics of the resource. Procedurally, a requirement of site examination could be established within the SMA permit process though it might not be a requirement for all SMA permits. An example of a guide-

line expressing this management strategy is:

(4) Policy Guideline: Applications for special management permits shall:

(a) identify scenic resources on the project site and adjacent properties;

(b) explain how the proposed development will affect public views of coastal scenic resources, and

(c) explain how proposed development will affect public views to and along the shoreline.

Policy (3)(B): Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural land forms and existing public views to and along the shoreline.

Comment #1: The phrase "alteration of natural land forms and existing public views to and along the shoreline" should be defined.

The term "alteration of natural land forms" has two important parts. First, the word "alteration" suggests activities, such as grading, cutting, filling, dredging, and excavation, which may modify natural land forms. Secondly, the term "natural land forms" suggests that the definition be limited to alterations of landforms of natural origins, omitting man-made land forms such as coral fill areas, canals, and artificial beaches, and probably areas previously altered by man's activities, such as urban developments and croplands. Since it is unclear as to whether this latter interpretation is intended in the policy, the following alternative definitional guidelines are suggested:

(5a) Definitional Guideline: "Alteration of natural land forms" means any modification of land previously unaltered by man's activities, and which are not limited to, grading, cutting and filling, dredging and excavating.

(5b) Definitional Guideline: "Alteration of natural land forms" means any modification of land areas, except man-made land areas, through activities including, but not limited to, grading, cutting and filling, dredging and excavating.

The term "alteration of existing public views to and along the shoreline" also has two parts. First, the word "alteration" suggests activities which could modify "existing public views to and along the shoreline." These activities, excluding those which may modify natural land forms, may include the construction of structures and the removal of vegetation. Removal of vegetation should be qualified, however, to exclude harvesting of crops.

Secondly, the term "existing public views to and along the shoreline" limits the area to which the policy will apply. At one extreme, the entire coastal zone may be included in this definition; i.e., if the vantage points were to include all areas accessible to the public, including all accessible areas inland of the coastal zone. At the other extreme, the area could be minimized by limiting the vantage points to specific locations. Since no limitation as to vantage points is contained in the objectives and policies, the entire range of possible vantage points is apparently available.

One arbitrary vantage point mentioned in the existing SMA guidelines is "the state highway nearest the coast." This vantage point could be used to define "existing public view to the shoreline." Another vantage point is necessary, however, to define public views "along the shoreline". The selection of "public recreation areas along the shoreline" as a vantage point may be appropriate. If both of these vantage points are used, a definitional guideline may read as follows:

(6a) Definitional Guideline: "Alteration of existing public views to and along the shoreline" means any modification of views to the shoreline from the state highway nearest the coast and views along the shoreline from public shoreline recreation areas, through the removal of vegetation, except crops, and the construction of structures.

Alternative definitional guidelines may be developed by specifying other vantage points:

(6b) Definitional Guideline: "Alteration of existing public views to and along the shoreline" means

any modification of views to the shoreline from the state highway nearest the coast and from public recreation areas in the coastal zone management area and views along the shoreline from public shoreline recreation areas, through the removal of vegetation, except crops, and the construction of structures.

Comment #2: The terms "designing" and "locating" should be defined and activated in the network of coastal land and water management.

There are two general ways in which the location and design of new developments can be controlled in order to "minimize the alteration of natural land forms and existing public views to and along the shoreline." The first method involves planning the location and design of new developments using existing land use mechanisms such as zoning. The second method involves using existing mechanisms for the issuance and denial of permits and approvals including the attaching of conditions to permits and approvals requiring special siting and/or design.

The first method involves a survey and assessment of "natural land forms" and "existing public views to and along the shoreline". This would be followed by a review of existing land use plans to find inconsistencies between land use designations and zonings and the policy such as overly permissive building height or density limitations. Finally, amendments to existing land use plans could be made in order to correct identified inconsistencies.

Land use plans exist at both the State and County levels, and therefore a decision would need to be made as to the level at which the process should be implemented. Because of the level of detail involved in this process; i.e., building heights and densities, implementation at the County level may be more appropriate. A procedural guideline for implementing this process might read as follows:

(7) Procedural Guideline: The County Planning Departments shall survey, assess and inventory the regional distribution of land forms and existing public views to and along the shoreline, and shall recommend changes needed in the General Plans and

related documents and ordinances to the appropriate bodies.

Counties, in lieu of conducting their own surveys, could rely on survey data included in the register of scenic resources to be developed through one of the guidelines suggested in Comment #1 on policy (3)(A). A procedural guideline for implementing this alternative might read as follows:

(8) Procedural Guideline: County Planning Departments shall follow the register of scenic resources in reviewing and recommending revisions, as necessary, to their respective General Plans and related documents, in order to ensure that management of natural lands forms and existing public views to and along the shoreline in compliance with the policies and objectives relating to coastal scenic and open space resources.

The second method for controlling the location and design of new developments is in the development review process. The major development review mechanisms currently available are those of the State Land Use Commission in its approval of land use boundary amendments, County agencies in their approval of County General Plan amendments and zoning changes, and the SMA permit authorities in their issuances of SMA permits. These agencies may be required, through procedural guidelines, to assess the impacts that a proposed development will have upon natural land forms and existing public views to and along the shoreline. Such a requirement, however, would need to provide some flexibility since it should not be a requirement for all SMA permits. Examples of guidelines expressing this management strategy follow:

(9a) Procedural Guideline: Agencies shall require, where warranted, detailed studies which assess the impacts which proposed developments may have on natural land forms and existing public views to and along the shoreline, and may require, as necessary, mitigation measures, including alternative siting within the development site and alternative structural designs, in order to minimize adverse visual impacts, before a permit is issued.

(9b) Procedural Guideline: Agencies shall, where warranted, determine whether proposed developments will have visual impacts upon natural land forms and exsiting public views to and along the shoreline and shall require, as necessary, mitigation measures, including alternative siting within the development site and alternative structural designs, in order to minimize adverse visual impacts, before a permit is issued.

Policy (3)(c): Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.

Comment #1: The implementation of this policy should be assigned to particular agencies.

A highly restrictive mechanism which may be useful for furthering the policy of preserving open space and scenic resources is the shoreline setback law (Chapter 205, Part II, HRS). This law requires that Counties enforce stringent controls within the setback area, including prohibiting new construction except under certain circumstances. Both the Land Use Commission and the Counties may establish setback lines at an inland distance greater than that established by the law. Thus, procedural guidelines requiring the Land Use Commission or the Counties to amend the shoreline setback line to include shoreline open space and scenic resources may be an effective means to implementing this policy.

Prior to amending the shoreline setback line, however, a survey should be conducted to identify shoreline open space and scenic resources which should be included in the setback area. Requirements for this process could be included in this process. Moreover, public input may be appropriate. A procedural guideline to accomplish this purpose might read as follows:

(10a) Procedural Guideline: The County Planning Departments, in consultation with the public, shall survey and assess shoreline scenic and open space resources to identify these areas which may appropriately be included in the shoreline setback area as defined in Chapter 205, Part II, H.R.S. Recommendations shall then be submitted to the county councils and the State Land Use Commission for

possible inclusion in the shoreline setback area.

As an alternative procedure, counties in lieu of conducting their own survey, could rely on survey data included in the register of scenic resources to be developed pursuant to one of the guidelines suggested in Comment #1 for policy (3)(A). A procedural guideline for implementing this alternative may read as follows:

(10b) Procedural Guideline: County Planning Departments shall follow the register of scenic resources in identifying areas appropriate to be included in the shoreline setback area as defined in Chapter 205, Part II, H.R.S. Recommendations shall be submitted to the county councils and the State Land Use Commission for possible inclusion in the shoreline setback area.

Policy (3)(D): Encourage those developments which are not coastal dependent to locate in inland areas.

Comment #1: Some guidance should be given to agencies as to what is meant by "coastal dependent development".

The term "coastal dependent development" was considered as part of Discussion Paper #3: Guidelines for Economic Uses Management in Hawaii's CZM Act.

Comment #2: The importance of this policy deserves special attention.

This policy is potentially one of the most significant in the CZM law. How agencies interpret this policy in their decision-making will have a substantial impact on the effectiveness of the CZM program. If non-coastal dependent developments locate in inland areas, most of the objectives and policies in the law would be relatively easy to implement. However, should agencies not implement this policy, then the other objectives, policies and guidelines must bear the burden of preserving coastal resources. How should the word "encourage" be understood. Two alternatives follow:

(11a) Policy Guideline: Unless a development qualifies as "coastal dependent," agencies shall require such developments to be sited outside of the coastal zone management area except where such a requirement would result in significant economic burden to a property owner.

(11b) Policy Guideline: Agencies shall require inland siting when it can be accomplished without significant economic burden to the developer.

Discussion Paper #5
Guidelines for Managing Developing in Hawaii's CZM Law

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This is the fifth in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers will be distributed for discussion and comment among members of the advisory groups as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Managing Development in Hawaii's CZM Law

Government is responsible for dealing with the consequences of land and water development. A wide variety of laws and regulations have been enacted. Almost every aspect of the development process involves a public agency in a regulatory or monitoring role. The multitude of regulations and environmental permits relating to development projects, however, has resulted in a process which is confusing for developers, government officials and public interest groups alike. However, it is clear that the highly regulated development process has minimized adverse consequences of development on valuable coastal resources.

Environmental and special problems associated with land development activities, such as air and water pollution, aesthetic blight, and loss of shoreline access, persist in spite of the increase in governmental authority over such activities. Simultaneously, the demands on governmental agencies to address these problems have not lessened.

Virtually all the participants in the land development process are frustrated, at least to some degree. Criticisms of Hawaii's system for the regulation and review include the following: agency

requirements are vague with respect to the process for acquiring development permits; new standards or guidelines for proposed developments appear to grant broad discretionary authority to the regulators; governmental review and approval at each step of the development process creates substantial uncertainties and adds risks for the developer; the costs of the development increase as a result of time-consuming delays; agencies often require similar data and multiple administrative and appeals procedures which result in expensive delays in the processing of permits; there is insufficient communication and coordination among reglatory agencies; agencies tend to focus on only a narrow range of concerns related to proposed developments and ignore or underplay the broader implications of management decisions; and there appears to be a lack of a coordinated information base upon which to make management decisions.

Faced with the problems associated with the proliferation of bureaucratic "red tape", a number of efforts have been initiated by the public and private sectors to improve the coordination of regulatory procedures in the land development process. Among the major efforts are the following:

The Honolulu-Pacific Federal Executive Board's compilation of two documents: (1) a register of government agencies and private groups involved with environmental concerns in the Pacific area; and (2) an Environmental Activity Approval and Permit Index to inform the public of the County, State, and Federal regulatory requirements that have impact on environmental resources.

The Construction Industry Legislative Organization's (CILO) project to streamline the development process. The project consists of three phases: (1) problem identification and recommendations; (2) methodology for implementing the proposed changes; and (3) formulation of specific legislation for submission to the Federal, State and County levels of government.

Legislative enactment of Act 166, Session laws of Hawaii 1976, which created the Council of Housing and Construction Industry to provide expertise, guidance and support to government in the areas of housing, construction, and related problems.

Legislative enactment of Act 74, Session Laws of Hawaii 1977, which mandated, among other things,

that the Counties set up a "Central Coordinating Agency" that would: maintain and update a repository of all laws, rules, and regulations, procedures, permit requirements and review criteria of all Federal, State and County agencies having any control or regulatory powers over land development projects; study the feasibility and advisability of utilizing a master file of all application forms for building permits, subdivision maps, and land use designations of the State and County; and schedule and coordinate, when requested by an applicant, any referrals, public information meetings or any public hearings.

The Honolulu City Council's efforts to revise the Comprehensive Zoning Code (CZC), part of which involves the transfer to the Department of Land Utilization of some of their coveted planning powers, such as approval of applications in such areas as Interim Development Control and Special Design Districts and approval of permit applications for shoreline management areas, conditional uses, planned developments, and cluster developments.

The consolidation of the Conservation District Use Application (CDUA) approval with the Department of Transportation's requirement for a Shorewaters Construction Permit for construction activities within the shorewaters and conservation district of the State. This combined CDUA/Shorewaters Construction Permit process would culminate in Land Board action on the CDUA, provided that in cases where the DOT recommends disapproval and the Land Board approves, the applicant would be required to obtain a Shorewater Construction Permit under the existing permit system.

The State of Hawaii Government Organization Commission's recommendation to combine the existing State departments into "super-agencies" and consolidate regulatory authority.

The Department of Planning and Economic Development Aquaculture Planning Program's study of governmental requirements which apply to aqua-

culture and the need for streamlining the existing aquaculture development review process.

Legislative enactment of Act 188, relating to Coastal Zone Management, (Act 188 along with the Shoreline Protection Act of 1975 (Act 176), forms Chapter 205A, HRS) which sets forth objectives and policies and implementing actions for managing development activities in the coastal zone. As part of the Coastal Zone Management Program's initial effort to improve the development review process, the Department of Planning and Economic Development has prepared a register of government permits required for development.

[These activities are detailed in an upcoming PUSPP paper, "Hawaii's Efforts Toward a Coordinated Approvals Process."]

While all of these efforts are directed at the broad objective of simplifying regulatory procedures, arrangements for coordinating independent activities are not well structured. There are differences in emphasis and the provisions for exchange among these groups are piecemeal or nonexistent. In the absence of coordination, the practical utility of the combined effort is difficult to ascertain.

It is, therefore, important to note the potential that the CZM Program and the Hawaii CZM law (Chapter 205A, HRS) have for coordinating the various activities. The CZM Program will guide public and private uses of lands and waters in the coastal zone in concert with other government management programs. The DPED, as lead agency for the CZM Program, is undertaking a major effort, among its tasks, to improve the coordination and simplification of regulatory procedures affecting coastal and inland areas. The Hawaii CZM law, in recognizing Hawaii's environment as "both undermanaged and over-regulated", provides a vehicle to further the CZM Program's commitment to improve the coordination of regulatory procedures. In doing so, it can also promote the coordination of other streamlining efforts. The CZM law set forth an objective in the area of "managing development" in the coastal zone, which is to:

> Improve the development review process, communication and public participation in the management of coastal resources and hazards.

In addition to the above, there are three general policies which are intended to provide the means for achieving the objective. What

follows is an analysis of the policies and an identification of the areas which may be in need of guidelines.

Policy (7)(A): Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development.

Comment #1: Some guidance should be given to agencies as to what is meant by "effectively utilize and implement existing law to the maximum extent possible."

As noted earlier, the proliferation of laws and regulations affecting land development projects has created problems for developers, government officials, and public interest groups alike. A series of laws have been enacted by the Legislature to address these problems (specifically Act 166, Act 74, and Act 188), and could conceivably be utilized and implemented effectively or "to the maximum extent possible." A procedural guideline could emphasize to agencies the importance of these laws.

(1) Policies Guidelines: All government agencies with permit authority shall support activities promulgated by the Legislature which are directed at the coordination of regulatory procedures.

In addition, coordination among the numerous streamlining efforts is needed. It was suggested earlier that the DPED is actively involved in the improvement of regulatory procedures. Some form of guidance may therefore be given to the DPED regarding the coordination of streamlining efforts. A guideline could be used for this purpose.

(2) Procedural Guideline: The DPED, in the development of coordination and simplification proposals, shall attempt to coordinate efforts directed at approving regulatory procedures.

Comment #2: Some form of guidance should be given to agencies on the importance of simplifying permit application requirements.

One source of guidance could come from Section 205A-5 of the CZM Law which requires all agencies to amend their regulations to

comply with the objectives and policies of the Chapter and the guidelines enacted by the Legislature. Conceivably, this section of the Chapter could be amended to require agencies to simplify their regulatory requirements in conjunction with or while they are amending their rules and regulations. Section 205A-5, would then be amended as follows:

> Within two years of the effective date of this Chapter, all agencies shall amend their regulations, as may be necessary, to comply with the objectives, and policies of this Chapter and the guidelines enacted by the Legislature, keeping in mind the goals of simplifying processing of those applications.

Alternatively, a guideline could be used. Such a guideline might read as follows:

> (3) Policy Guideline: All government agencies, in the review and revision of rules, regulations and procedures, shall keep in mind the goals of simplifying permit application requirements and the prompt processing of those applications.

Comment #3: There is a need to enforce existing rules, ordinances and statutes regarding unauthorized structures and the establishment of residences on public lands and waters, especially within the Shoreline Setback area.

Government agencies have not consistently enforced existing laws regarding illegal structures and occupation of public lands and waters. This has resulted in persistent problems regarding squatters and their homes in many shoreline areas of the State, such as Waimanalo Beach, Sand Island, and Makua Beach on Oahu and on the northshore of Kauai. Unauthorized additions and ancillary structures illegally encroaching into the Shoreline Setback area also pose a serious problem. These problems become particularly troublesome when public access and views to the ocean are obstructed.

A procedural guideline could require some explicit consideration of existing laws and their enforcement by agencies.

> (4) Procedural Guideline: Government agencies shall enforce all existing laws, ordinances, rules and regulations pertaining to the prevention or prohibition of unauthorized structures and the establishment of residences

on shoreline lands and waters, especially within the Shoreline Setback area.

Policy (7)(B): Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements.

Comment #1: Some guidance should be given to agencies as to how the processing of applications for development permits can be facilitated.

The processing of applications for development permits is sometimes considered unnecessarily lengthy because agency decisions are seldom predicated upon explicit time limits. Furthermore, where time limits are provided, they are sometimes inconsistent with the limits imposed by other agencies. In many instances, the lack of explicit and consistent time limits has resulted in confusion among developers proposing projects in different Counties; increased amounts of time required for acquiring development approvals; and increased costs, efforts and uncertainty associated with the decisions. The processing of applications for acquiring development permits can be facilitated by the following guideline:

(5) Procedural Guideline: All government agencies shall establish, where possible, similar time limits for the consideration of permit applications.

Comment #2: There is a need to streamline the SMA permit process.

SMA permits are required in the county SMAs for all development which costs or has a fair market value in excess of $25,000 or "... which significantly affects the coastal zone, taking into account potential cumulative effects." SMA minor permits are required in the county SMAs for all structural development which costs or has a fair market value less than $25,000 and which does not "significantly" affect the coastal zone. Only a few types of development are exempted from having to obtain SMA permits and minor permits including single family homes, agricultural operations, building interior renovations, and "grandfathered" buildings, subdivisions, and planned developments. §205A-29, HRS, further requires that a public hearing be held prior to approval or denial of every application for a SMA permit.

There are at least four options for streamlining the SMA permit process:

(1) expanding the list of developments which are specifically exempted by law from needing a SMA permit,

(2) raising the "threshold" for SMA permits from $25,000 to some higher amount.

(3) exempting specific non-controversial kinds of development from public hearing requirements, and

(4) giving county planning departments discretion to exempt development from public hearing

It should be noted that these options could be used in combination with each other.

Expanding the list of developments exempted from SMA permits and minor permits would reduce the burden on county planning departments. This option would, however, mean that public agencies would not examine the exempted developments for compliance with CZM objectives and policies. For example, "grandfathered" subdivisions currently are not examined for compliance with CZM policies when applications are filed for building permits.

A proposal follows for a guideline to implement the first option.

(6a) Definitional Guideline: "Development" does not include (see draft list of non-controversial development on following page) provided that the proposed actions do not involve an activity which must obtain a permit from any Federal agency and do not have significant environmental impacts.

Table 1 lists the 211 activities granted SMA permits throughout the State prior to the effective date of Act 188, SLH 1977 (June 8, 1977). Table 2 lists the direct impacts of these SMA permits as evaluated by PUSPP staff. It should be emphasized Tables 1 and 2 are part of a preliminary CZM/PUSPP study and subject to future revision. However, using these two tables, it is a first list of what would appear to be non-controversial development.

Draft List of Non-controversial Development

road repairs, restoration of historic and prehistoric buildings and sites, repairs and minor alterations of existing structures;

construction of buried utility pipes and lines including sewage conduits but excluding injection wells and wastewater outfalls;

non-controversial public and non-profit projects mauka of the coastal highway provided that they do not involve reduction of water flow in any perennial stream and do not involve an activity which must obtain a permit from any Federal agency;

agricultural facilities and aquaculture facilities;

water and sewage pumping stations, but not wastewater treatment facilities;

public parks and recreational facilities provided that they do not involve an activity which must obtain a permit from any Federal agency;

public boat launching ramps but not seawalls, groins, or breakwaters to protect boat launching ramps from wave damage;

landscaping of public facilities and installation of sprinklers; and

subdivisions of agricultural land mauka of the highway.

The second option involves raising the $25,000 "threshold" for SMA permits. This would give the county planning departments greater flexibility to determine what types of development require a minor permit rather than a SMA permit. THe only other threshold criteria that county planning departments have is the statutory requirement that SMA permits are needed for any development "...which significantly affects the coastal zone, taking into account potential cumulative effects." The term "significant" is however subject to varying interpretation. Furthermore the issuance of minor permits, instead of SMA permits, would reduce the quality of the development review process unless all applicable SMA objectives and policies were considered. A possible guideline to implement the second option would read as follows:

TABLE 1

STATE OF HAWAII
USES GRANTED SMA PERMITS UNDER INTERIM CZM CONTROLS
December 1975 to June 1977

(Note: Some permits allowed multiple uses.)

USES	LOCATION			TOTAL
	Not Recorded	Makai of Coastal Highway	Mauka of Coastal Highway	
Energy Facilities (power plants, cooling facilities, oil storage facilities)		2	2	4
Harbor and Boating Facilities (docks, piers, ramps)		8		8
Harbor and Boating Infrastructure (pavement, lights, warehouses)		6		6
Utility Pipes, Lines, and Pump Stations (water, oil, sewage, power)	23			23
Roads and Road Improvements	16			16
Drainage Improvements and Facilities	8			8
Sewage Treatment Facilities		1		8
Hotel Lodging Units		5	1	6
Resort Improvements other than Lodging Units (bars, restaurants, shops, recreation facilities)		13	2	15
Airport Improvements, Facilities and Concessions		3	4	7
Other Coastal Dependent Economic Uses		2		2
Subdivisions of Agricultural Land		3	1	4
Agricultural Facilities		2	1	3

TABLE 1 (continued)

USES	LOCATION			TOTAL
	Not Recorded	Makai of Coastal Highway	Mauka of Coastal Highway	
Other Economic Uses Which are not Coastal Dependent (stores, manufacturing, maintenance yards, junkyards, storage)		12	15	27
Public Parks and Recreation Facilities (grass, lights, gymnasiums, swimming pools, comfort stations, parking lots)		21	5	26
Restoration of Historic and Prehistoric Buildings and Sites		1	1	2
Schools, School Improvements, and Libraries		5	4	9
Residential: 5 Units/Acre or Less		7		7
Residential: 6 to 10 Units/Acre		4	2	6
Residential: 11 to 20 Units/ Acre		8	1	9
Residential: 21 to 30 Units/ Acre		3	3	6
Residential: 31 Units/Acre or More		1		1
Residential: Multiple Densities on Large Site (master planned resort housing)		2		2
Air Conditioning, Repair, and Minor Alteration of Existing Public Buildings	4			4
Other Miscellaneous Public and Non-Profit Uses which are not Coastal Dependent		3	6	9
TOTAL ALL USES	50	113	48	211

TABLE 2

STATE OF HAWAII
SMA PERMIT IMPACTS UNDER INTERIM CZM CONTROLS

Stream Channelization	2
Alteration of Wetlands	0
Shoreline alteration necessary for coastal dependent development	15
Shoreline alteration not necessary for coastal dependent development	3
Destruction of historic/archaeological sites	1
Urbanization of agricultural land	2
New cesspools or injection wells*	30
Housing/hotel in flood or tsunami area	27
Destruction of coastal recreational resources	1
Development of new coastal recreational resources or facilities (excludes maintenance of existing facilities and new facilities such as tennis courts which are not shoreline related)	19
Other	32

*Note: Oahu data complete; neighbor island data incomplete.

(6b) Definitional Guideline: "Development" means, on land, in or under water, any of the following, the total cost of fair market value of which exceeds, or which significantly affects the coastal zone, taking into account potential cumulative effects, or which violates any of the objectives and policies set forth in this chapter: See 205A-22 (2) for the rest (follows"...potential cumulative effects:")

The third option involves non-controversial kinds of development from SMA public hearing requirements. This would maintain the current development review while eliminating public hearings. However, sometimes even seemingly non-controversial activities like public parks, may be sufficiently controversial to warrant a public hearing. It would therefore seem advisable to allow public hearings to be held at the request of a county planning department or interested member of the public.

Possible wording follows for a guideline to implement the third option. The list of non-controversial development included with the first guideline option would also be applicable to this option.

(6c) Procedural Guideline: Public hearings need not be held for (see draft list of non-controversial development on page 12) provided that no public hearing is requested by a county planning department or any interested member of the public. County planning departments shall develop procedures to inform the public when permit applications are filed for such developments.

The fourth option involves giving county planning departments broad discretion to exempt developments from SMA public hearing requirements. This would maintain the current development review and eliminate public hearings that in many cases have not been well attended. However, guidelines used by the planning departments to exempt developments from SMA public hearing requirements, will necessarily be fairly general and subject to interpretation. It would seem therefore advisable to allow public hearing to be held at the request of interested members of the public. A guideline to implement the fourth option might read as follows:

(6d) Procedural Guideline: Public hearings need not be held provided that actions do not involve an activity which must obtain a permit from any Federal agency, do not have significant environmental impacts, and do not violate any of the objectives and policies set forth in this chapter,

and provided further that no public hearing is requested by a county planning department or any interested member of the public. County planning departments shall develop procedures to inform the public when special management area permit applications are filed.

Comment #3: Some guidance should be given to agencies as to how overlapping or conflicting permit requirements can be resolved.

The content of agency rules, regulations and permit requirements governing development projects is not always clear, uniform and consistent. This may create tensions between the various agencies and may result in the duplication of work and delays in the processing of permit applications. Inconsistent and conflicting rules and regulations not only exist between different departments, but within departments as well. A department, for example, may have a dual but conflicting role in its management functions, resulting in internal confusion among program administrators and the operation of programs without decision making consistency. Therefore, a guideline is needed to address this problem.

#1 from SCF task force draft (7) Procedural Guideline: Government agencies should review all ordinances, rules, regulations, pertaining to "coastal" related activities to insure the greatest degree of clarity, uniformity and consistency possible. Effort should be made to eliminate conflicting rules and regulations between or within agencies.

Comment #4: Additional guidance may be needed in terms of how unnecessary permit information requirements can be eliminated.

Agency requirements for information are sometimes in excess of what is needed for decison making purposes. Developers, who must provide the required information, are thereby faced with unnecessary costs, effort and uncertainty. A guideline may help to resolve this problem.

#5 from SCF task force draft (8a) Procedural Guideline: All government agencies with permit authority for coastal related activities should be encouraged to scale their data requirements for such permits to the size and impact of the proposed activity.

An alternative guideline could be:

(8b) Procedural Guideline: Within 1 year, all agencies shall develop explicit guidelines for data requirements for all permits within their jurisdiction and the rationale for such guidelines.

Comment #5: Additional guidance may be needed with regard to how the information gathering efforts for coastal zone decision making can be coordinated.

While effective resource management decision making is predicated upon adequate information, such information does not always exist in a usable form. Sometimes the existence of the particular information needed is not known or the information cannot easily be obtained. Citizen groups face problems of gaining access to data and usually are unable to afford the services of a consultant to collect the information on which to base their arguments. Furhtermore, information which is collected may not always be updated, or it may be collected piecemeal without being brought together in one place. Research efforts for coastal zone decision-making could be improved considerably by the establishment of a coordinated data management system. A data management system would greatly facilitate the work of planners, decision makers and citizen groups. The establishment of such a data management system could be instituted through the following guideline:

#3 from SCF task force draft (9) Procedural Guideline: The DPED shall explore the cost and feasibility of establishing a coordinated data management system or "data bank" which would contain as much information as possible about specific areas of the State. The data bank should contain two major types of information: (1) basic data, such as demographic, physical, economic, environmental, historical, and cultural data: and a bibliography of materials: and (2) information on development permit and approval requirements

in the State at all levels of government. The purpose of the "data bank" would be to provide base line data which would be meaningful and useful to planners, decision makers and citizen groups. Funding of the DPED's study shall be reported to the Legislature within one year of the enactment of this guideline.

Comment #6: Coordination of information may be also needed in the area of current State planning efforts.

Several major State planning efforts are presently in progress, including the State Plan, the CZM Program, the Areawide Waste Treatment Management Plan, SCORP, DLNR's recreational plan, and the Conservation District Plan. While each of these planning efforts serves a specific purpose, coordination could result in a common information base. A common information base would facilitate coastal zone management decision-making at all levels of government to help and ensure a useful public dialogue on shoreline development issues. In addition, it may be possible to allocate information gathering tasks among the various planning efforts so as to minimize duplication of effort in data collection. Such coordination could be encouraged by the following guideline:

(10) Procedural Guideline: The DPED shall facilitate the coordination of information gathering and dissemination among State planning efforts. Among its major tasks in this area should be the following: (1) identify the potential decision-making clients so as to coordinate formats for information storage, map scales, data sources and similar issues; (2) propose mechanisms for periodic up-dating of information; and (3) insure public access to such information.

The key to the effectiveness of the DPED's effort to coordinate information gathering and dissemination is agency support. Therefore, it may be important to have a guideline which makes this consideration explicit.

(11) Procedural Guideline: All State agencies engaged in the development of plans shall support the DPED's effort to improve the coordination of information gathering and dissemination for coastal zone decision making.

Comment #7: Additional guidance should be given to agencies as to how they can contribute to the ongoing development of permit registers.

As noted earlier in this paper, a major effort to streamline regulatory procedures in Hawaii is the development of permit registers or repositories by the Honolulu-Pacific Federal Executive Board, the County Central Coordinating Agencies pursuant to Act 74 and the DPED as part of its CZM program. These registers provide a concise source of information on development permit and approval requirements in the State which is useful to both the public and private sectors. They list the regulatory permit or approval requirements currently in force and the responsible agency or authority. As new regulations are enacted or existing ones are changed, these registers should be updated or expanded. It would, therefore, seem that a guideline may be needed to support these efforts.

(12) Procedural Guideline: All government agencies shall support the efforts of the Federal Executive Board, the County Central Coordinating Agencies and the DPED in maintaining, updating, and expanding their permit registers.

Policy (7)(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the general public to facilitate public participation in the planning and review process.

Comment #1: Some guidance should be given to agencies as to what is meant by "significant coastal development".

The identification of coastal developments which are significant could be made through the following definitional guideline:

(13) Definitional Guideline: "Significant coastal development" means any development in the coastal zone management area meeting one or more of the following conditions: (1) will be the subject of a public hearing pursuant to §205A-29, HRS; (2) will reduce water flow in a perennial stream; (3) requires a permit from any Federal agency; (4) a county planning department considers to have potential significant

impacts on lands or waters seaward of the inland boundary of the Special Management Area; and (5) a county planning department considers to be sufficiently controversial to warrant a public hearing.

"Coastal Zone Management area" and "development" are defined under §205A-22.

Comment #2: Some guidance would be given to agencies as to how public participation can be facilitated.

The public can become involved early in the planning and review process of major public and private development projects through public informational meetings. Agencies have periodically held informational meetings to provide opportunities for public review and comment early in the development of proposed projects. Such efforts should be encouraged. A guideline can be used for this purpose.

(14) Procedural Guideline: All agencies shall encourage public participation by holding public information meetings, especially at the locations of the projects, early in the planning and review process of significant coastal developments.

Comment #3: Citizen groups need to be involved in the planning and review process of coastal development.

Citizen groups are very important in providing meaningful public input in the development of public progra ms and plans and in the review of development projects. They are an effective means of soliciting citizen concerns and informing citizens in the community of problems and progress regarding government actions. The Statewide Citizens Forum, is an outstanding example of meaningful citizen input in the development of the CZM Program. A proposed guideline, developed by the Forum, may be used to support the continuation of their efforts.

#4 from SCF task force draft

(15) Policy Guideline: The adoption of the Hawaii Coastal Zone Management Program should not mean the end of meaningful citizen input provided by the Statewide Citizens Forum. There will be a continuing need for review of the objectives, policies and guidelines as well as review of the individual counties' activities

to amend the present Special Management Areas to bring them into conformity with State requirements.

Comment #4: Some guidance is needed as to how the potential impacts of proposed significant coastal developments can be communicated.

The potential impacts of proposed significant coastal developments can be communicated through a public inforation campaign. Unless citizens have the opportunity to secure factual information, they cannot be expected to participate in the planning and review of development projects. In order to facilitate public awareness and effective participation, relevant information must be generated and disseminated. A guideline can be used for this purpose.

(16) Procedural Guideline: The DPED shall conduct an extensive public awareness campaign including, but not limited to, the following elements: timely notices of hearings and meetings; public involvement in the ongoing review, evaluation, and modification of the CZM Program; dissemination of information by means of various media, educational materials, published reports, personal staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities.

Discussion Paper #6
Guidelines for Coastal Hazards Management in Hawaii's CZM Law

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This is the sixth in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Coastal Hazards Management in Hawaii's CZM Act

Objective (6): Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

Policies (6)(A): Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;

(6)(B): Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;

(6)(C): Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(6)(D): Prevent coastal flooding from inland projects.

The purpose of this paper is to discuss possible statutory "guidelines" which would further specify Act 188 policies on coastal hazards. The intent of Act 188 is to reduce hazard to life and property within the coastal zone and not to address hazards which will only affect inland areas. Guidelines for coastal hazards should

protect recreational resources such as beaches and water quality and allow development of sand resources when no adverse impacts would result.

Policy (6)(A): Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard.

One rationale for this policy is to educate people so that they will be willing: (1) to evacuate low-lying coastal areas in the event of tsunami, storm waves, or floods and (2) to comply with controls on development in coastal hazard areas.

Comment #1: There is a need to educate the public about the location of coastal hazard areas that might need to be evacuated and about the reasons for regulating development in coastal hazard areas.

Currently, no public agency in Hawaii is taking responsibility for educating the public about the location of storm wave and flood hazard areas which might need to be evacuated nore about the nature of coastal hazard areas and the reasons for controlling development in coastal hazard areas.

Guidelines can assign responsibility to specific agencies to educate the public about coastal hazards.

(1) Policy Guideline: The Department of Planning and Economic Development and State and county civil defense agencies shall support programs to educate the public about the location of areas that might need to be evacuated because of tsunami, storm waves, or floods. The Department of Planning and Economic Development and State and county civil defense agencies shall also support programs to educate the public about the reasons for regulating development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard.

Policy (6)(B): Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard.

Development controls in storm wave, tsunami, and flood hazard areas are intended to protect life and property and to minimize the need for disaster relief and publicly subsidized insurance payments to private property owners in storm wave, tsunami, and flood hazard areas. In the past, disaster relief and insurance payments have essentially "subsidized" development in coastal hazard areas.

Development controls in areas subject to erosion are also important. If someone is allowed to build a house in an area threatened with beach retreat, then that person will want to protect his property. If he does not build seawalls or revetments along the shoreline then his house will be destroyed. If he does build them, then wave action will eliminate the beach in front of the structures he has built and possibly eliminate the beach on both sides of the structures. Public recreational use of part of a beach and public thoroughfare along a shoreline probably will be eliminated as long as the seawalls or revetments remain in existence. This now is the case in parts of Lanikai, Oahu.

Sand mining at Paia, Maui, is believed to have contributed to the retreat of beaches in the littoral system westward to Kahului. Sand removal at Waimea, Oahu, is believed to have contributed to the retreat of beaches southward to and including Haleiwa Beach. Dredging of the fringing reef at Kapaa, Kauai, is believed to have left a hole that is trapping sand that normally would have nourished the beach. Consequently, the beach at Kapaa is now eroding. The construction of groins and breakwaters at Waikiki Beach instead of preventing long-term beach retreat has redistributed sand along the beach and caused some areas to erode more rapidly than others. Seawalls and revetments currently prevent formation of beaches in many parts of the State.

Storm Wave, Tsunami, and Flood Hazard

Comment #1: There is a need to address the possibility that tsunami hazard areas shown on Federal Flood Insurance Program maps do not include all storm wave hazard areas.

Compliance with the National Flood Insurance Program (NFIP) is one specific way of controlling development in storm wave, tsunami, and flood hazard areas, i.e., requiring floodproofing in building codes. The NFIP requires that the ground floor of residential structures be elevated above the height of the inundation level of tsunamis,

storm waves, and storm floods with a 1 percent probability of occurrance in any year. The NFIP also requires that structures in hazard areas be able to withstand damage from temporary inundation. The counties will have to comply with the NFIP within their SMAs.

When developing NFIP hazard maps for Hawaii, the assumption has been made that tsunami inundation areas incorporate all areas subject to storm wave hazards. This is not necessarily the case. Historical patterns of tsunamis in Hawaii and historical patterns of storm waves in Hawaii have no necessary connection.

Guidelines can assign responsibility to DPED to investigate whether NFIP maps include all storm wave hazard areas. If existing NFIP maps are inadequate, then guidelines also can assign responsibility to DPED to recommend appropriate measures for revising NFIP maps.

(2) Procedural Guideline: Within one year of the effective date of this Act, after consultation with the United States Army Corps of Engineers and appropriate departments of the University of Hawaii, the Department of Planning and Economic Development shall report to the Legislature the probable locations, if any, of fifty year storm wave hazard areas in Hawaii which are not included in tsunami hazard areas shown on Federal Flood Insurance Program maps. If storm wave hazard areas are not included in tsunami hazard maps, then the Department shall also report on techniques and measures that would be appropriate to amend Federal Flood Insurance Program maps to include fifty year storm wave hazard areas.

Shoreline Erosion and Beach Protection

Comment #2: There is a need for a definition of "shoreline erosion hazard areas".

Shoreline erosion hazard areas include areas where changes in the size of beaches occur due to seasonal and/or long-term shoreline erosion. On some Hawaiian beaches, seasonal changes in beach front position may be on the order of 100 feet. Long-term shoreline erosion in some areas such as Kekaha, Kauai and Kalama, Maui has been as much as 300 feet in 50 years. Beach retreat is very common in Hawaii.

Guidelines can define shoreline erosion hazard areas in terms of an erosion hazard period. A possible criteria for selecting the erosion hazard period would be the useful lifetime of a single family house; i.e., 50 years. By comparison, the NFIP uses a 100-year hazard period for controlling development in areas subject to tsunami and flood hazard.

(3) Definitional Guideline: "Shoreline erosion hazard areas" means lands inland of the shoreline which are likely to be transformed into lands seaward of the shoreline at any time within a period of fifty years as a result of natural processes.

Comment #3: There is a need for long-term studies of natural sand processes so that shoreline erosion hazard areas can be identified and appropriate areas for sand mining can be identified.

Since natural sand processes are not well documented in many areas of the State, it will be necessary to study these processes in order to identify shoreline erosion hazard areas. A fringe benefit of studies of sand processes will be to identify areas where sand resources can be mined without adverse impacts on beaches.

Guidelines can assign responsibility to DPED to study sand processes, prepare maps of shoreline erosion hazard areas, and identify appropriate ares for sand mining.

(4) Procedural Guideline: The Department of Planning and Economic Development, in consultation with the Department of Land and Natural Resources, the United States Army Corps of Engineers, the county planning departments, and appropriate departments of the University of Hawaii, shall prepare studies of long-term natural Hawaiian sand processes including gains, transport, and losses of sand in near-shore littoral cells. Such studies of sand processes shall be used by the Department of Planning and Economic Development to prepare and update maps of areas which are likely to become shoreline erosion hazard areas as a result of beach retreat and to identify areas where sand mining will not have adverse impacts on beach processes.

Comment #4: There is a need to identify existing shoreline structures in order to control construction of new structures which might adversely affect beach processes.

It is now almost impossible to regulate shoreline structures because there is no way to determine which structures are "grandfathered" and which structures are new. Guidelines can assign responsibility to the county planning departments to inventory existing legal shoreline structures. Once the inventory is complete, it will be possible to identify future illegal shoreline structures and require their removal.

(5) Procedural Guideline: The county planning departments, in consultation with the Department of Land and Natural Resources and the Department of Planning and Economic Development, shall, within one year of the effective date of this Act, prepare an inventory of existing seawalls, revetments, groins, breakwaters, and other shoreline and near-shore structures and development, regardless of cost of fair market value. The inventories shall note those structures and developments which received all necessary permits and approvals for construction and those that were not approved.

Comment #5: There is a need for explicit criteria to guide regulation of shoreline structures which might adversely affect beach processes.

Seawalls and revetments, during times of beach retreat, cause erosion of beaches fronting them and often block public thoroughfare along the shoreline. Groins and breakwaters in areas with sandy beaches usually protect beaches in some areas by causing beach retreat elsewhere. Thus it is necessary to restrict construction of seawalls, revetments, groins and breakwaters. Existing State law should be supplemented in order to ensure that public agencies restrict construction of shoreline and near-shore structures which would cause shoreline erosion or a reduction in the size of beaches.

Guidelines can require that shoreline structures be designed, or that conditions be imposed, in order to protect public thoroughfare. For example, there are a number of seawalls which are used as public walkways. It also would be possible to protect public

thoroughfare along the shoreline by dedication of public easements mauka of shoreline structures.

It would also be desirable to protect wide beaches and heavily used beaches from seawalls, revetments, groins, and breakwaters. In the case of narrow, lightly used beaches fronting on developed land, however, homeowners would be allowed to protect their homes from beach retreat by constructing shoreline structures.

In some circumstances allowing shoreline structures makes sense. "Sand-grabbers" at Kualoa, Oahu, may succeed in increasing the size of a public beach protecting Kualoa Park from further erosion. Or revetments at Kekaha, Kauai, are necessary to protect an existing public highway from erosion. Hence, guidelines prohibiting new shoreline structures should allow exemptions in cases where there are no adverse impacts and in cases where there is a need to protect valuable existing public structures. Shoreline structures might therefore be allowed for reasons of public health or in cases where there are overwhelming public benefits.

Guidelines for shoreline structures cannot be directed solely at the SMA authorities. For a number of these activities, a SMA permit is not required because the development costs less than $25,000 or is makai of the shoreline.

Because it is not possible to draft guidelines for shoreline structures which take all circumstances into account, public agencies should be given discretion in the "grey areas". When discretion must be left to public agencies, it would be logical, for instance, to grant the county SMA authorities sufficient power to determine which beaches will be protected. Under current law, the DLNR can allow structures to be built makai of the shoreline in cases where the county SMA authorities would not be willing to issue shoreline setback permits. Guidelines can give the counties a voice in decisions on near-shore structures.

(6) Policy Guideline: Agencies shall not issue any permit or approval for construction of any seawall, revetment, groin, breakwater, or similar shoreline or near-shore structure or development, regardless of total cost or fair market value, unless such structure or development is designed, or conditions are imposed, to guarantee safe public thoroughfare along the shoreline during all seasons of the year and unless either:

(a) such public structure or development is necessary for reasons of public health or where there are overwhelming benefits to the general public; or,

(b) such structure or development is necessary to protect public structures existing as of the effective date of this Act with a total cost or fair market value in excess of $250,000; or,

(c) a qualified geologist or ocean engineer first certifies that (i) such structure or development shall not decrease the size of any beach and (ii) such structure or development would be necessary to halt long-term shoreline erosion; or,

(d) the county special management area authority first determines that (i) such structure or development would be necessary to protect an existing private dwelling unit or an existing private structure with a cost or fair market value in excess of $25,000, (ii) the beach fronting the existing private dwelling unit or structure is not of sufficient recreational value or potential to justify prohibition of shoreline or near-shore structures or development, and (iii) the proposed shoreline or near-shore structure or development would not adversely affect the size of any beach except the beach fronting the existing private dwelling unit or structure, provided that shoreline and near-shore structures or development proposed to protect an existing private dwelling unit or structure shall not be issued any permit or approval when the existing private dwelling unit or structure is fronted by a beach which is wider than fifty feet, between the vegetation line and the mean lower low water line, during any season of the year.

Comment #6: There is a need for explicit criteria to guide regulation of development in shoreline erosion hazard areas in order to protect beach processes.

The reason for restricting development in shoreline erosion hazard areas is the same as the reason for restricting construction of seawalls, revetments, groins, and breakwaters.

Existing State law should be supplemented in order to ensure that public agencies restrict development in shoreline erosion hazard areas.

Difficult choices are involved in regulating development in areas subject to shoreline erosion. Explicit guidelines are needed to specify which kinds of development will not be permitted in which kinds of areas. A blanket prohibition on all development within shoreline erosion hazard areas would not be justified. If there are existing structures within shoreline erosion hazard areas, then it might be reasonable public policy to allow renovation, maintenance, and minor alteration of such structures. However, it may not be appropriate to allow complete replacement of existing structures which would be threatened with beach retreat. And it is questionable what new kinds of development should be allowed in areas threatened with beach retreat.

A reasonable management program for regulating development in shoreline erosion hazard areas would first involve designating beaches where construction of seawalls, revetments, groins, and breakwaters would be prohibited. In shoreline erosion hazard areas where construction of seawalls, revetments, groins, and breakwaters would not be permitted, major new developments, including single family homes and replacement of comparable existing development, should prohibit the construction of structures which might become seawalls, revetments, groins, or breakwaters as a result of beach retreat.

There is one specific problem which must also be considered unless guidelines are carefully worded, there is a possibility that the State Land Use Commission could approve urbanization of shoreline erosion hazard areas. The Commission's current viewpoint is that "land use distrcit boundary amendments" are not "permits" which must be preceeded by SMA permits pursuant to Ch. 205A-29(d), HRS. Section 205A-29(d) provides that:

> No county or state department authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received from the [SMA] authority...

(7) Policy Guideline: Agencies shall not issue any permit or approval for construction of:

(a) any new single family residence which is not part of a larger development, or

(b) any new structure or structures the total cost or fair market value of which exceeds $25,000, or

(c) any rubble or solid wall or structure which might become a shoreline seawall, revetment, groin, or breakwater as a result of beach retreat, regardless of cost or fair market value,

within any shoreline erosion hazard area unless the appropriate county planning director first certifies that a new protective seawall, revetment, groin, breakwater or similar shoreline or near-shore structure would subsequently be permitted pursuant to (Guideline 6).

Comment #7: Shoreline erosion hazard maps will need to be adopted as formal regulations subject to amendment on the basis of studies and appeals.

Since maps of shoreline erosion hazard areas will be used to regulate development, they should be adopted as rules and regulations pursuant to Chapter 91, HRS which specifies standardized procedures for adoption of rules and regulations. Because there will probably be appeals as to the technical adequacy of shoreline erosion hazard maps, appeal procedures will also have to be adopted as rules and regulations.

Guidelines can assign responsibility to the county planning department to adopt maps of shoreline erosion hazard areas along with rules and regulations governing appeals. It would be reasonable to require fees to cover costs and to require that a qualified geologist evaluate evidence presented in appeals.

(8) Procedural Guideline: Within two years of the effective date of this Act, the county planning departments, in consultation with the Department of Land and Natural Resources and the Department of Planning and Economic Development, shall adopt maps of shoreline erosion hazard areas as rules and regulations pursuant to Chapter 91.

The county planning department shall also adopt rules and regulations governing amendments to shoreline erosion hazard maps to improve their technical adequacy on the basis of studies and appeals. Such rules and regulations shall require that a qualified geologist evaluate evidence presented in appeals and may set reasonable fees to cover all costs of processing appeals.

Comment #8: Pending development of adequate shoreline erosion hazard maps, property owners should be required to prove that new development would not be threatened by beach retreat.

Since fiscal or political restraints might delay the studies necessary for the preparation of maps of shoreline erosion hazard areas, interim measures probably will be needed. A guideline should state that pending amendments, shoreline erosion hazard area maps would initially include lands within 150 feet of the shoreline at all beaches.

(9) Policy Guideline: Pending amendments based on studies or appeals, maps of shoreline erosion hazard areas shall initially include all lands and waters up to and including 150 feet inland of the shoreline at all beaches.

Comment #9: The definition of "coastal zone management area" needs to be amended to include lands and waters seaward of the county special management areas.

It is not entirely clear whether policies and guidelines in the CZM law are legally binding seaward of the shoreline. A guideline defining "coastal zone management area" to include Hawaii's territorial waters might solve this problem

(10) Definitional Guideline: "Coastal zone management area" also includes all lands and waters seaward of the county special management areas and within the limits of the State's territorial jurisdiction.

Comment #10: There is a need for explicit criteria to guide regulation of sand mining and dredging in order to protect beach processes and in order to allow sand resources to be developed when no adverse effects would result.

Sand mining within most parts of a littoral cell which supplies beaches with sand usually casuses shoreline erosion. Dredged holes and channels in reefs and in tsunami and storm wave hazard areas can trap sand that normally would have helped beaches to resist erosion.

Existing State law is not adequate to ensure that public agencies restrict dredging of holes or channels which would cause shoreline erosion or a reduction in the size of beaches, though it is adequate to restrict sand mining. In fact, State law restricts off-shore sand mining so completely that sand mining is prohibited even when no adverse effects would result.

Only a qualified geologist would be capable of identifying areas in which sand mining would not adversely affect the size of beaches. After a study of natural sand processes, a geologist might be able to identify off-shore deposits of sand which have been permanently lost from near-shore littoral cells. And only a geologist would have the technical expertise to suggest appropriate mitigation measures when dredging was required for shoreline projects. If sand were dredged from a stream mouth to prevent flooding, then a geologist might recommend that dredged sand be placed on the beach adjoining the stream mouth.

Guidelines can require that coastal sand mining and dredging only be permitted when a qualified geologist determines that sufficient conditions are imposed on permits to prevent adverse effects on beaches.

(11) Policy Guideline: Agencies shall not issue any permit or approval for:

(a) sand mining or dredging of holes or channels seaward of the shoreline,

(b) sand mining or dredging of permanent holes over 1,500 cubic feet in area on lands designated as tsunami and storm wave hazard areas on Federal Flood Insurance Program maps, or

(c) removal of sand from streams, drainage channels, canals, harbors, and areas where there

is no legal shoreline.

except in cases where the permit or approval imposes sufficient conditions to prevent adverse effects on the size of any beach. Such conditions shall be determined and/or approved by a qualified geologist.

Catastrophic Subsidence

Comment #11: Maps of subsidence hazard areas should be adopted as formal regulations.

Since maps of catastrophic subsidence hazard areas will be used to regulate development, they should be adopted as rules and regulations pursuant to Chapter 91, HRS. All catastrophic subsidence areas are located on the Big Island. The U.S. Geological Survey has already developed maps of areas on the Big Island subject to relatively high risk from subsidence. Although infrequent, subsidence can cause substantial property damage. "Slump-block" subsidence presents the major source of subsidence hazard to the Big Island's coastline because sudden settling of shoreline land can drop property below sea level and cause local tsunamis.

Guidelines can assign responsibility to the county planning departments to adopt maps of catastrophic subsidence hazard areas. Only the Hawaii County Planning Department would be affected.

(12) Procedural Guideline: Within one year of the effective date of this Act, the county planning departments, in consultation with the United States Geological Survey and the Department of Planning and Economic Development, shall determine and adopt maps of coastal areas subject to relatively high risk of catastrophic subsidence as rules and regulations pursuant to Chapter 91.

Comment #12: There is a need for explicit criteria to guide regulation of development in subsidence hazard areas in order to protect life and in order to minimize disaster relief and insurance payments.

Existing State law does not adequately reflect the problems of catastrophic subsidence hazard areas.

It would be reasonable to restrict all lodging and dwelling units in subsidence hazard areas, require that SMA permits only be given to public development after full consideration of the risks of subsidence, and require owners of private developments in subsidence hazard areas to waive the right to publicly subsidized insurance and disaster relief as a prerequisite to SMA permits.

(13) Policy Guideline: Special management area and building permits shall not be issued for any of the following kinds of development in coastal areas subject to relatively high risk of catastrophic subsidence as shown on county planning department maps:

(a) any new lodging or dwelling unit, regardless of whether or not it is part of a larger development,

(b) any public development required to obtain a special management area permit which in the judgement of the special management permit authority would not provide benefits which would justify the risk of public costs following catastrophic subsidence, or

(c) any private development required to obtain a special management area permit unless conditions are imposed to ensure that no person shall be reimbursed by public or publicly subsidized insurance or public grants for property damage caused by catastrophic subsidence.

Comment #13: Amendments would be needed to the State Shoreline Setback Law because it conflicts with Proposed Guidelines 6 and 11. The Shoreline Setback Law explictly directs public agencies to approve private shoreline structures in all cases where property is threatened by beach retreat or wave damage. The Shoreline Setback Law also prohibits sand mining within ocean water of less than thirty feet of depth or within 1,000 feet of the shoreline--even when no adverse impacts would occur from sand mining.

If guidelines were added to the State CZM Law to restrict shoreline structures which cause shoreline erosion or a reduction in the size of beaches, then it also would be necessary to amend the State Shoreline Setback Law to eliminate conflicts with such guidelines. Amendments in the Shoreline Setback Law also would be needed to allow sand mining in cases when it would be permitted pursuant to new CZM guidelines on sand mining and dredging.

(14) Policy Guideline: [Inappropriate language would need to be deleted from Chapter 205-33, 205-35, and 205-36. A new sentence would be required. "A variance shall be granted for such structure, activity, or facility if, after a hearing pursuant to Chapter 91, such government body as designated in this section finds in writing, based on the record presented, both: (1) that such structure, activity or facility is in the public interest; and (2) that such structure, activity, or facility is in compliance with all the policies and guidelines contained in Chapter 205A."]

Comment #14: Amendments would be needed to the State Real Property Tax Law to prevent unfair taxation when development is restricted in erosion and subsidence hazard areas.

If guidelines were added to the State CZM Law to restrict development in areas threatened with beach retreat and in areas with risk of catastrophic subsidence, then it also would be necessary to amend the State Real Property Tax Law to reflect restrictions on development. One approach would be to amend the Property Tax Law so that when development is restricted, some property tax relief would be available. Specific amendments to the Property Tax Law to make such an approach operational would have to be developed by the State Department of Taxation.

(15) Policy Guideline: [A new section would be needed in Chapter 246 providing that when development is restricted, pursuant to Chapter 205A, in shoreline erosion hazard areas and in coastal areas subject to relatively high risk of catastrophic subsidence, then affected property shall be assessed for tax purposes at some rate which takes into account these restrictions.]

Policy (6)(C): Ensure that developments comply with requirements of of the Federal Flood Insurance Program.

Comment #1: This policy is sufficiently explict that no guidelines are needed.

Policy (6)(D): Prevent coastal flooding from inland projects.

Regulating the rate of storm water runoff from inland projects protects urban development on the coastal plain from flooding and prevents erosion which might damage coastal ecosystems.

Comment #1: There is a need for explicit criteria to guide regulation of storm water runoff from inland projects in order to protect coastal development from flooding and in order to prevent erosion which would damage coastal ecosystems.

Because the counties regulate urban-type development within the urban, rural, and agricultural districts, the counties are the logical place to assign responsibility for regulating the rate of runoff from inland development. New guidelines can direct the county councils to designate agencies to regulate the rate of runoff from development.

Currently, all of the counties regulate hook-ups with county storm drains to prevent them from being overloaded. However, it is not the practice to regulate the rate at which storm water runoff from inland projects is disposed of into natural drainage systems. Inland developments are allowed to dispose of their runoff into stream beds even when this might cause downstream erosion and flooding.

Guidelines can ensure that the counties restrict development runoff into natural drainage channels or directly onto urbanized coastal areas. To avoid cumulative impacts from development runoff, the focus of such guidelines would be to prevent increases in storm flow in natural drainage channels or onto urbanized coastal areas when erosion or flooding would result.

Guidelines can direct the counties to discourage channelization of natural drainage courses and encourage disposition of development runoff on land in ways which would prevent flooding of urbanized coastal areas and prevent sediment from reaching coastal ecosystems.

(16) Procedural Policy Guideline: Each county council shall designate an agency responsible to regulate the rate of runoff from development. Within two years of the effective date of this Act, agencies designated to regulate runoff from development shall adopt rules and regulations pursuant to Chatper 91 to accomplish the following purposes:

(1) to ensure that for all development on areas of two acres or more which drain into natural drainage channels, that during rainstorms the rate of water flow at the makai property boundary in the natural drainage channels which occurred before the development shall not be increased by the development, provided that exemption from this requirement shall be given when (a) there is no risk of affected natural drainage channels causing flooding of urbanized coastal areas and (b) there is no risk of an increase in erosion in affected natural drainage channels as a result of an increase in the rate of water flow during rain storms, and

(2) to ensure that for all development on areas of two acres or more which drain directly onto urbanized coastal areas, that during rainstorms the rate of runoff onto urbanized coastal areas which occurred before the development shall not be increased by the development, and

(3) to discourage channelization of natural drainage courses and to encourage disposition of development runoff of land by means of ponding, by means of permeable pavement, and by other means which would prevent flooding of urbanized coastal areas and prevent sediment from reaching the ocean and perennial streams.

Discussion Paper #7

Guidelines for Coastal Ecosystems Management in Hawaii's CZM Law

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This is the seventh in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of either the Department of Planning and Economic Development or the University community.

Guidelines for Coastal Ecosystems Management in Hawaii's CZM Law

Hawaii's coastal natural resources are most usefully viewed as assemblages of interrelated ecosystems--groupings of living organisms and their physical environment, which together form an interacting system. Every organism affects and is affected by conditions within its system. Not only are species and physical processes interrelated within a particular ecosystem, but changes in one ecosystem can be transmitted to another ecosystem through biological and physical linkages.

Because an ecosystem approach emphasizes the relationship of each part of the natural environment to the whole, it is proposed as the basic unit from which to develop management strategies. It is at the ecosystem level, rather than the level of the individual organism, that the costs of irreversible biological damage are most intense for human society.

The Hawaii State Legislature, in passing the CZM Act of 1977, recognized the significance of ecosystems and committed the State to the better management and protection of coastal ecosystem. One objective of the CZM law is to:

Protect valuable coastal ecosystems from disruption and minimize adverse impact on all coastal ecosystems.

Four policies are intended to provide the means for achieving the objective:

* Improve the technical basis for natural resource management;

* Preserve valuable coastal ecosystems of significant biological significance or economic importance;

* Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and

* Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

The purpose of this paper is to examine the above objective and policies with the intent of identifying those areas that may be in need of further guidelines. Analyses of the problems are provided, and guidelines are suggested that reflect those problem areas.

Objective (4): Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

Policy (4)(A): Improve the technical basis for natural resource management.

Comment #1: There is a need to develop a process for determining technical information needs and priorities.

While effective resource management decision-making is predicated upon adequate basic information, such information does not always exist in usable form. At times, the existence of information is not known or the required information cannot be easily and regularly obtained. At other times, conflicts arise as to what type of information is needed and for what purpose.

Research efforts for coastal zone decision-making, particularly coastal ecosystems, may be improved considerably by the creation of a technical advisory committee. While determining research needs and priorities might be viewed as a management function, a technical committee composed of administrators, natural scientists and resource specialists would assist the DPED in carrying our these responsibilities. This committee would be responsible for recommending to the DPED what the technical information needs are (e.g., monitoring of ecosystems or baseline surveys of ecosystem types) and what the priorities should be among the various needs to facilitate ecosystem management. The committee would also assess the adequacy of research designs so that the expected results would be of aid to resource managers and decision-makers. Too often studies are poorly designed (or over-designed), and the results of little utility. The establishment of an advisory committee could be instituted through the following guideline:

(1) Procedural Guideline: The Department of Planning and Economic Development shall establish a CZM program technical advisory committee to advise on: 1) technical information needs, 2) research and funding priorities, 3) the technical adequacy of research designs proposing the use of CZM funds for coastal ecosystem studies. The technical advisory committee shall be composed of representatives from DPED, appropriate state agencies, county planning departments, appropriate departments of the University of Hawaii, Corps of Engineers, and other interested and affected parties.

Policy (4)(B): Preserve valuable ecosystems of significant biological or economic importance.

Comment #1: There is a need to identify all coastal ecosystems, distinguish them by relative importance and permissible use, and to display the results in a format which can be easily used by public and private parties.

Virtually all ecosystems have been disturbed by man, either intentionally or unintentionally. According to Maragos, "When we speak of 'managing' natural ecosystems, we must remember that naturally occurring ecosystems have managed to manage themselves for thousands of years (at least since the recession of the last ice age) without assistance from man. Thus when we speak of the 'management' of

coastal water ecosystems, we really mean the 'management of human activities' which affect these ecosystems, because it is these activities which have disrupted the normal functioning and processes within the system." (At the end of this paper, a useful list of background materials is presented including the paper from which this was taken.)

The coastal ecosystem objective and this policy are quite explicit in stating the purpose of coastal ecosystems management: valuable coastal ecosystems are to be preserved and protected from disruption and adverse impacts on all coastal ecosystems are to be minimized.

All ecosystems are not created or disturbed equally. They may be expected to differ in natural quality, relative abundance, in how they react to a particular type of disturbance, and the ways in which people make use of them. These differences should be reflected in management so that (1) high quality ecosystems (those with high potential for impact or those least disturbed by man) are preserved and protected from most uses to hedge against future uncertainties, (2) ecosystems which are resilient or whose natural qualities have been degraded by past use are managed for multiple human uses, and (3) ecosystems of low natural quality (those that have been well exploited, modified, or degraded) are managed for intensive (development) uses.

Human activity should be distributed unevenly across units of ecological similarity. The preferred classification does not preclude development in the coastal zone management area but directs uses based on avoidance or prevention of impacts. Some ecosystems would remain relatively untouched and preserved while human activity is concentrated in others where natural resource values have already been degraded.

The above approach would require mapping the geographic extent of coastal ecosystems within the coastal zone management area and distinguishing among them according to their relative importance. The maps would indicate to the general public, developers, and decision-makers where projects should be closely scrutinized (and where they shouldn't), what type of ecosystem is likely to be affected, and the "toughness" of the ecosystem. Because these maps would be used to guide development through use restrictions (or conversely, uses compatible with the quality of the ecosystem), they should be adopted as rules and regulations pursuant to Chapter 91, HRS. The rules and regulations should also establish procedures for dealing with exceptional cases.

(2) Procedural Guideline: The SMA authority shall within one year of the effective date of this act identify all coastal ecosystems and delineate their geographic extent. These maps will be adopted as rules and regulations pursuant to Chapter 91. Once identified, these ecosystems will be assigned to one of three categories:

(1) Preservation. All valuable coastal ecosystems shall be included in this category. Only non-consumptive uses such as scientific research, outdoor recreation, or nature appreciation shall be permitted. For the purposes of this section, non-consumptive uses are those which leave the ecosystem in an undisturbed condition after the use.

(2) Conservation. Ecosystems shall be designated as conservation if they are (i) terrestial areas containing unmanaged vegetation and (ii) streams, low wetlands, coastal wetlands, estuaries, brackish water lakes except areas specified for preservation and water bodies functioning as effluent ponds and ditches. Both consumptive (ecosystem disturbing) and non-consumptive uses will be permitted provided that the uses do not conflict with each other and do not reduce the remaining natural quality of the ecosystem.

(3) General Use. All other ecosystems not within the above categories shall be placed within this category and intensive, developmental use of these areas will be permitted.

The SMA shall also establish procedures for dealing with exceptional use cases within their rules and regulations. The SMA authority may also adopt any other rules and regulations necessary to manage these areas. The process of mapping these areas is not intended to replace the SMA boundary mapping required under this law.

Comment #2: There is a need to define what is meant by "valuable coastal ecosystems."

Hawaii's coastal ecosystems are valuable for many different reasons--economic activities, recreation, research and education, and biological diversity. Policy (4)(B) narrows the range of ecosystem values by identifying valuable coastal ecosystems as those of "significant biological or economic importance." What is meant by significant "biological or economic importance" should be further clarified by a guideline:

(3) Definitional Guideline: "Valuable coastal ecosystems" are those ecosystems which are of significant biological or economic importance. Coastal ecosystems of significant biological or economic importance are those ecosystems that (1) are scarce or limited to specific geographic areas, (2) are especially vulnerable or susceptible to alteration and destruction, (3) provide habitats for commercial or recreational resources and activities such as fishing, and (4) demonstrate a low potential for regeneration or are isolated from similar ecosystems that would enable regeneration. Such ecosystems include, but are not limited to:

i) terrestial areas dominated by coastal strand ecosystems which provide habitat for or buffer the habitat of threatened or endangered native avifauna.

ii) perennial streams, anchialine pools, brackish water lakes, and estuaries that are dominated by native aquatic fauna and provide habitat for or buffer the habitat of threatened or endangered native aquatic species, and other water bodies which are vital to the life support of threatened or endangered seabirds or water birds; and

iii) turtle nesting beaches.

Comment #3: Ecosystems assigned a management purpose may have natural qualities such that they could be moved to a more restrictive category.

Ecosystems that are designated for conservation or general use may have natural qualities that could move it to a more restrictive use category. Restoration potential should be evaluated by considering the degree of severity and reversibility of past disturbances as well

as the distribution and abundance of the ecosystem. An ecosystem should be considered restorable if damages to natural quality is reversible, either naturally or managerially at reasonable cost and within a reasonable time.

(4) Policy Guideline: Ecological types which are geographically limited or which provide habitat for native species whose numbers are limited should be considered candidates for reclassification from conservation to preservation if past disturbance is limited to degradation which is naturally or managerially reversible within a few years.

(5) Policy Guideline: Ecosystem types which are designed for general use but which have resource attributes attractive for multiple uses should be considered candidates for conservation classification if past disturbance is limited to degradation which is naturally or managerially reversible within a few years.

Comment #4: The definition of "coastal zone management area" needs to be amended to include lands and waters seaward of the county special management areas.

It is not entirely clear whether the policies and objectives in the CZM law are legally binding seaward of the shoreline. The objectives and policies of the law are "binding upon actions within the coastal zone management area by all agencies." "Coastal zone management area" is defined as "...the special management area after compliance pursuant to section 205-23 of this Chapter..." Section 205A-23 provides that within two years of June 8, 1977, the County SMA authorities shall amend their SMA boundaries, subject to DPED "...review as to compliance with the objectives and policies of this chapter..." The County SMAs now do not include coastal waters.

A guideline redefining "coastal zone management area" to include Hawaii's territorial waters could clearly make all CZM objectives, policies and guidelines legally binding on agency permits and actions seaward of the shoreline.

Using the ecosystem approach, the following argument can be made for extending the CZM area seaward. The ecosystem approach emphasizes that all ecosystems are tied together through biological and physical linkages. Activities which disrupt one ecosystem may in turn affect other ecosystems. In recognition of this interrelationship, if coastal

ecosystems are to be protected, it makes no sense to protect only those ecosystems within the CZM area and not those found in marine waters. Activities which affect an inland ecosystem may in turn affect a marine ecosystem, and conversely, an activity in marine waters may disrupt ecosystems on land. The following guideline is therefore proposed:

(6) Definitional Guideline: "Coastal zone management" area also includes all lands and waters seaward of the county special management areas and within the waters of the State's territorial jurisdiction.

Comment #5: There is a need to specify what permit would apply in this area.

If the coastal zone management boundary is amended as suggested by the previous guideline then the SMA permit would logically apply to all proposed activities in marine waters. The SMA Authority is the permitting authority within the special management area which if amended, would incorporate marine waters as part of the SMA.

However, it would not seem reasonable for the SMA permit to apply to activities in marine waters. What it would amount to is overlaying an additional permit system on an existing permit system.

Because marine waters are included in the conservation district, the Conservation District Use permit appears to be the appropriate permit:

(7) Policy Guideline: The Conservation District Use Permit shall be the Coastal Zone Management permit for all waters within the territorial boundaries of the State of Hawaii. All State waters will be classified in the Resource subzone or any more restrictive subzone and subject to the limitations on permitted uses that are contained in the Regulations governing those subzones.

Comment #6: There is a need to specifically identify, locate, evaluate, and map viable (living) coral habitat areas within those waters under the jurisdiction of the State of Hawaii. A high priority should be placed on the identification of those coral communities which are presently being commercially harvested, disturbed or modified, including those stresses or activities which may biologically alter fishery species abundance, distribution or health.

The State of Hawaii had made a commendable effort in recent years to identify and map environmental habitats and natural resources located primarily within the inland areas of Hawaii's coastal zone (SMA areas). In particular, the Hawaii CZM Program has contributed significantly to the understanding of where coastal resources and ecosystems are located and their biological and economic importance.

In a similar manner, an effort should be made to specifically identify, locate and evaluate coastal ecosystems and natural resources which are located within the State's territorial waters. As more activities occur within Hawaii's marine environment, it will become increasingly important to have an adequate understanding of what specific marine biological factors are environmentally significant. Proper policy-making decisions may then be made which will define permissible recreational and economic activities.

Of those marine resources in need of study, Hawaii's coral community habitats are perhaps the most important. Near-shore shallow water coral communities serve as dynamic natural incubators and refuges for many of the fishery resources we enjoy for recreational, educational or commercial purposes. Unmanaged commercial exploitation of near-shore coral communities together with the effects of near-shore pollution may significantly affect the quality and health of these valuable coastal ecosystems. Offshore deep water coral communities have become increasingly important for the "precious" coral species they contain. Processed into fine and relatively expensive jewelry, deep water coral resources provide the State with an industry which has, in recent years, experienced significant economic growth.

To ensure that Hawaii's coral resources are properly protected and managed, the State should initiate a program to identify the location and environmental condition of specific coral communities. Special attention and effort should be placed on the identification of those coral communities where commercial coral harvesters are operating or where critical biological stress has become evident.

(8) Procedural Guideline: The Department of Land and Natural Resources shall develop a viable coral habitat mapping program that shall specifically identify areas where commercial coral harvesting or coral habitat disturbances are taking place. This investigation shall provide an accurate locational analysis of where identifiable coral habitats are located, where coral harvesting activities are presently taking place, where coral harvesting activities may occur in the future, and where coral habitats are in danger of being ecologically damaged or modified.

Comment #7: There is a need to establish specific quota limits for commercial coral harvesting activities operating within identifiable coral resource habitats. Commercial coral harvesting quota limits should not only reflect the maximum sustainable yield of specific species but also the interrelationship of harvested species in the particular coral habitat, the identifiable flora and fauna ecosystem dependence, and the possible recreational or educational values of the coral habitat and the related fishery ecology.

The State of Hawaii currently allows the commercial taking of coral resources in all territorial waters except those which are located within 1,000 feet of the shoreline area in waters of 30 or less in depth, or located in Natural Area Reserves (NARS) or Marine Life Conservation Districts.

Because the State defines coral as a "renewable fishery resource", a potential commercial coral harvester must only apply for a standard state commercial fishing permit which is issued on an annual basis. The cost of the non-discretionary permit it $10 (ten) dollars. Most of the coral fishing permits which are issued are "open" permits which allow the coral harvester the opportunity to extract as much coral as he locates. In one case, for a pink coral harvester, a permit was issued according to those provisions established by the Department of Land and Natural Resources (DLNR) Regulation 41, which set a specific quota limit on the amount of pink coral which could be extracted within a two-year time period, identified the specific coral habitat the harvester was restricted to and detailed the types of harvesting methods to be employed.

In determining the specific quota limit for the amount of pink coral which could be harvested, the DLNR follows a management concept commonly referred to as maximum sustainable yield (MSY). The determination of the MSY involves an estimation of how much coral may be removed from a specific habitat. The following factors are taken into consideration; the total area of the coral habitat, the density of the coral species, the net growth rate, and, the natural mortality rate of the specific species. No environmental impact assessment has ever been made which evaluates the environmental consequences of removing quantities of coral from coastal habitats including the effect on surrounding fishery resources. However, in a recent decision, the State Environment Quality Commission (EQC) ruled that coral harvesting may be a "significant environmental action" and has requested that the DLNR prepare an opinion as to whether an environmental assessment of commercial coral harvesting activities needs to be made.

In order to properly protect and manage State coral habitats a coral resource management program should be instituted by the DLNR. Specific commercial harvesting quota limits should be assigned for each identified coral habitat. These limits should take into

consideration not only the maximum sustainable yield (MSY) of the particular coral species, but also the environmental assessment of effects on the surrounding marine flora and fauna the opportunities for educational and recreational activities which may be affected, and, the economic consequences of extracting coral and altering the existing fishery. To ensure that the potential coral harvester abides by set harvesting provisions, a security bond should be established for each coral harvesting activity. No harvesting should be allowed within identifiable coral habitats until quota limits and security bonds are established.

(9) Procedural Guideline: The Department of Land and Natural Resources shall develop a coral habitat resource management program aimed at managing coral harvesting activities (commercial and non-commercial) and coral habitat disturbances within State waters. Specific coral harvesting quotas and harvesting permit security bonds shall be required for commercial coral harvesting activities based upon (1) maximum sustainable yield evaluation, (2) environmental assessment of flora and fauna dependence, (3) available educational and recreational opportunities, and (4) economic potentials of coral and fishery resources. Commercial coral harvesting shall not be permitted within identifiable coral habitats until coral harvesting quota limits and security bonds are established. Pursuant to provisions of Chapter 343, HRS, an Environmental Impact Statement shall be required for all commercial coral harvesting activities within State waters. The DLNR shall also be held responsible for coordinating and conducting a review of coral harvesting activities at the time State commercial coral harvesting permits are issued. These reviews shall serve to monitor commercial coral harvesting activities and evaluate possible ecological disturbances or modifications on a yearly basis.

Comment #8: There is a need to establish the principle that coral resources fall within the concept of "public resources" which are owned and managed by the State. While the State may grant private interests permission to extract coral resources from State waters, compensation for that permission should be returned to the State in the form of public resource utilization taxes or royalties.

Chapter 188, HRS, states that all fishing grounds belonging to the state "for the free and equal use of all persons." Coral, because it is considered to be a "fishery resource", can therefore be commercially harvested from any submerged land area by any single individual or coporate entity once a commercial fishing permit is obtained. Currently, the State demands no compensation for the right to harvest or utilize coral resources. Harvested coral is usually processed and manufactured into curio handicrafts (dyed coral centerpieces, bookends, paperweights) or fine jewelry and decorative pieces (rings, bracelets, necklaces).

There is currently a dispute between Federal agencies as to whether coral resources should be considered as a resource of the outer continental shelf (OCS), or whether coral resources should be classified as a fishery. In a ruling issued in September of 1975, the Department of the Interior held that "viable communities" located within Federal waters, are an OCS resource and that permission to commercially harvest those corals are subject to a fee of no less than five (5) percent of the estimated fair market value of the sold coral.

However, according to the Fishery Conservation and Management Act of 1976 (FCMA) passed by Congress in April of 1976, corals are classified as "Continental Shelf fishery resources" and are not subject to any Federal royalty or commercial fee. The Department of Commerce, with the assistance of a plan to be prepared by the Western Pacific Fishery Management Council, is given authority to manage those coral resources located within Federal waters as a fishery resource.

If coral and coral habitats were considered as "public resources" by the State, commercial harvesting activity would be controlled in the same manner that other resources on public lands are controlled. Coral resources would not be "free" to any individual and permission to harvest coral would be subject to State discretionary permission. Further, the responsibility would be placed on State agencies to ensure that coral habitats were properly protected and managed as State property.

Setting a limit for the monetary fee the State may charge commercial coral harvesters is difficult because no study exists which specifically identifies the commercial value of harvested coral. This information is considered a "trade secret" by the coral industry. As a starting place, reference may be to those royalty fees charged for State geothermal resources as provided by DLNR regulation. As provided in that regulation, the rate of the royalty to be paid to the State of Hawaii for the production of geothermal resources shall be determined by the (Land) Board prior to the bidding for or granting of a mining lease, but the rate shall not be less than ten (10) percent, nor more than twenty (20) percent of the gross amount or value of the

geothermal resource." Funds collected in commercial coral harvesting fees could be used for the marine environmental and resource planning studies noted earlier in this paper.

(10) Policy Guideline: The DLNR shall consider coral as a "public resource" and therefore the property of the State of Hawaii. The removal of coral resources for the commercial purposes shall be subject to the imposition of just compensation amounting to a royalty or user fee or not less than ten (10) percent or no more than twenty (20) percent of the assessed fair market value.

Comment #9: Several research attempts to investigate environmental and economic impacts of commercial coral harvesting activities within State waters have resulted in a general lack of cooperation and steady resistence on the part of commercial coral harvesters and coral retail sales outlets. Commercial coral harvesters feel that information on the location of coral harvesting activities, the amount of coral harvested by species, and the value of coral harvested is confidential and that to release such information would allow competitors access to "trade secrets".

State coral harvesters, wholesalers, and retailers have been unwilling to cooperate in any study which attempts to identify who harvests coral, where harvesting activity occurs, under what conditions, and the value of the coral harvested. In one study, conducted in response to State House Resolution 619 by the 1977 Session of the House of Representatives, the researcher (R. Johannes) was frustrated enough to state that:

> "...retailers and wholesalers of stony corals were so uncooperative during this survey that their attitude requires more than passing comment."
>
> "...rudeness and hostility were common. Lack of cooperation was almost universal."
>
> "As a consequence of this widespread reticence, the information we obtained through interviews, fell short of what we needed in order to examine coral harvesting in a detailed quantitaive fashion."

Other research attempts aimed at gathering environmental and economic information on State coral resources have been equally frustrating.

Chapter 188, HRS, provides that commercial coral harvesters are required to submit monthly "catch" reports to the Division of Fish and Game (DLNR). These reports detail how much coral has been collected, the value of the coral harvested, and the approximate area where the coral harvesting activities took place. Data collected in this process is generally unavailable to researchers without the explicit consent of the commercial harvestor.

In order to properly protect and manage state coral habitats specific information on commercial coral activities and their resulting ecological impacts must be made available to public agencies, independent researchers and public interest groups.

(11) Procedural Guideline: Commercial coral harvesters shall be required to periodically report to appropriate governmental agencies, subject to public inspection, specific and detailed information relating to the particular coral habitat and ecology in which commercial harvesting activity is occurring, and for reviewing the impacts of that activity on the natural marine ecology.

Policy (4)(C): Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs.

Comment #10: The intent of this policy is to maintain adequate water flow and quality in perennial streams. There is a need to clarify agency responsibilities in this area, especially in light of the present jurisdictional controversy over minimum stream flow regulation.

The State Department of Health (DOH), as part of the "208" program, took the initiative in developing minimum stream flow requirements and has been attempting to incorporate the standards as part of their revisions to the State water quality standards (Chapter 37-A, Public Health Regulations).

At the public hearings, some strongly supported the development of such standards. A few requested that the standards be "tightened". Others, while generally supportive of the idea of minimum stream flow criteria, challenged the authority of the DOH to prepare those criteria. Still others saw the standards to be an unconstitutional "taking" of private property without just compensation.

There are at least three major issues that surround the controversy. The first issue concerns the adequacy, policy orientation,

and potential impacts of the standards. Are the standards technically accurate in attempting to preserve the integrity of natural stream systems? Or, are they overly excessive? That is, can more water be diverted without disrupting or degrading the ecosystem? Further, what would be the impacts of such standards on the sugar and aquaculture industries? And, is the state prepared to preserve these ecosystems if the result would have severe impacts on the sugar and aquaculture industries.

A second issue raises the problem of constitutionality. Do the standards result in an unconstitutional "taking" of private property. Or, are the standards justified on the basis of overwhelming public interest or in terms of the health, welfare or safety of the community? These questions, in the final analysis, may only be resolved by the courts.

The third issue concerns the jurisdictional responsibility for the development and application of such standards. And, this is an area where Act 188's policy for coastal ecosystems may be effectively utilized.

At the center of the jurisdictional issue is the lack of a specific mandate in existing legislation, both state and federal, to an agency or agencies for the development of minimum stream flow standards. Though arguments may be developed to provide the justification for the involvement of a particular agency, it may be preferable to specify the responsibilities of the agencies involved.

State water quality standards are promulgated by the DOH under the authority of Chapter 342, HRS. That Chapter also gives DOH the statutory authority to control other types of pollution. In questioning the DOH's initiative, the lack of statutory language specifically referring to minimum stream flow standards have been emphasized by a few critics.

It appears, however, that there is some statutory language in Chapter 342 that justifies DOH involvement. It is not an explicit authority and must be interpreted from the definition of water pollution. That definition is as follows:

> (7) "Water pollution" means:
>
> (A) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or

(B) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any State waters, as will or is likely to create a nuisance, or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife...

(Emphasis added) (See Section 342-31-(7), HRS)

The underscored portions suggest that the DOH may have a statutory justification for establishing minimum stream flow standards. The rationale, employing the ecosystem approach and the above definition is as follows: If fish and wildlife are to be protected then "water quality" must in all sense be protected. The law could not only have meant to protect water only against pollutants or else it would simply have included the Section 342-31(7)(B) portion of the definition. The (A) portion of the definition apparently was added to control the less obvious but just as significant impacts on water quality. Stream flow rates were not explicitly included on that list but the list is not meant to be exhaustive (..."including"...). And without the ability to preserve the flow levels, the power to control other alterations is meaningless. Furthermore, adequate flow levels are absolutely essential to protect "fish and aquatic life and wildlife" as the statute mandates.

It is important to note that nowhere in the statute is there a statement that clearly makes stream flow regulation a responsibility of the DOH. Yet it is also clear that the statute allows ample opportunity for interpretation.

On the other hand, most statutory authority for managing water resources have been vested with the DLNR. For example, power to control excessive stream flow (floods) have been placed in the Board of Land and Natural Resources (HRS 179-3) which also has jurisdiction over the water resources owned by the State (HRS 171-3, 174-5, and 177-6). The DOH's action in setting stream flow standards with its potential effects on stream uses, may be seen as infringing on the DLNR's regulatory authority as well as its conservation responsibilities.

The issue of jurisdiction may be resolved through a guideline to this policy. The language of the policy, "minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversion, channelization..." provides a basis for promulgating stream flow standards as a regulatory tool. Such standards would be basic to the achievement of the objective and policies for

coastal ecosystems. What is necessary, is a guideline that specifies the agency or agencies that is responsible, for developing stream flow standards.

(12) Procedural Guideline: The Department of Health and the Department of Land and Natural Resources, in consultation with appropriate Federal, State, and County agencies shall adopt joint regulations governing minimum stream flow levels in all perennial streams of high natural quality. Such regulations shall be adopted pursuant to Chapter 91 and shall reflect state water quality standards as well as the state's interest in preserving adequate supplies of water.

Policy (4)(D): Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

Comment #11: State water quality standards are currently being revised by the State Department of Health. The new standards are based on ecosystem tolerance as called for by this policy, hence guidelines appear inappropriate.

Much of what is presented in this discussion paper has been reported before in the CZM Program and in other State and Federal planning efforts. Useful background information to the comments in this paper can be found in:

1. Maragos, et. al., Hawaiian Coastal Water Ecosystems: An Element Paper for the Hawaii Coastal Zone Management Study, Hawaii Coastal Zone Management Program, Technical Supplement No. 1, August, 1975.

2. HCZM Program Document 1: Technical Considerations in Developing a Coastal Zone Management Program for Hawaii, August, 1975.

3. HCZM Program Document 8: Coastal Resources and Hazards: Identification, Analysis, and Recommendations Regarding Management Problems, "Natural Resources," December, 1976.

Discussion Paper #8
Guidelines for Recreational Resources in Hawaii's CZM Law

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This is the last in a series of working papers designed to aid in the examination of possible guidelines for Hawaii's Coastal Zone Management Law (Chapter 205A, Hawaii Revised Statutes). The papers are prepared as a response to the concerns of the Statewide Citizens Forum as communicated to the Department of Planning and Economic Development.

The papers are to be distributed for discussion and comment among members of the advisory group as they are drafted by the staff of the Coastal Zone Management Project, Pacific Urban Studies and Planning Program, University of Hawaii. The papers do not necessarily reflect the opinion of the Department of Planning and Economic Development or the University community.

Guidelines for Recreational Resources in Hawaii's CZM Law

Hawaii's CZM law contains an objective and a set of policies aimed at enhancing coastal recreational opportunities and encouraging effective recreation planning and management. The Statewide Citizens Forum has expressed the opinion that although guidelines can provide greater specificity to many of the objectives and policies of the law, guidelines for the objective and policies concerning recreational resources may not be needed. The recreational policies are the only set of policies within the CZM Law which contains a group of sub-policies expanding upon the policy to which they are attached. It was thought that these sub-policies were equivalent to a set of guidelines.

There are, however, some issues involved in the recreational resources planning and management goals of the CZM Law which could be addressed through the use of guidelines. These issues are not adequately handled by the sub-policies and require specific attention.

Objective (1): Provide coastal recreational opportunities accessible to the public.

Policy (1)(A): Improve coordination and funding of Coastal Recreation Planning and Management.

Comment #1: Some guidance is needed as to how the coordination of coastal recreation planning and management can be improved.

Recreation planning and management have been increasingly centralized within the Department of Land and Natural Resources (DLNR). This trend toward centralization should be supported by the CZM program and a series of guidelines could be helpful in that effort. The recent transfer of the responsibility for the preparation of State Comprehensive Outdoor Recreation Plan (SCORP) from the DPED to the DLNR provides a good basis for effective coordination. The SCORP itself provides a framework for setting goals, policies and priorities for the state and can be used as a means of coordinating the programs of all other states and county agencies with jurisdiction over recreation resources.

It should be noted that this policy deals only with "coastal" recreational activities. There seems little reason to separate the "coastal" activities from those which occur inland, and there are many reasons such as increasing coordination and minimizing conflict, to support a treatment of all recreational activities under one plan. The guidelines, therefore, is stated in general terms.

The DLNR should be assigned specific "lead agency" tasks as part of the ongoing SCORP responsibility including consolidating within the SCORP document(s) the small boat harbors plans and priorities of the Department of Transportation, the recreational plans and priorities of the counties and the plans of any other state or county agencies which are recreation related. Only by such coordination can state and county agencies avoid conflicts and duplication of efforts. A guideline might read as follows:

(1) Procedural Guideline: The Department of Land and Natural Resources, in consultation with other state departments, the county departments of parks and recreation and other appropriate county agencies, as well as other interested parties, shall develop a program to:

(1) determine overall State interests, priorities and objectives in coastal recreation planning and management;

(2) assure continued integration of County recreation programs with SCORP priorities; and

(3) develop methods (including, but not limited to, proposed legislation, inter-agency agreements and the delegation of authority) for resolving conflicts among agencies with jurisdiction over recreational resources.

Policy (1)(B): Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
...

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Encouraging expanded public recreational use of county, state, and federally owned or controlled shoreline lands and waters having recreational value;
...

(vii) Developing new recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing [;].

[Note: Sub-policies (ii), (vi) and (viii) will be handled separately.]

Comment #1: There is a need to provide for coordination in the consideration of these items.

These sub-policies are all concerns which should be addressed as part of the SCORP process. While all agencies must implement them, it is crucial that the SCORP process do so. As soon as the SCORP integrates these concerns it can then serve as a basis for decision-making by other state and county agencies. A pair of guidelines could be useful in assuring this result.

(2) Policy Guideline: The Department of Land and Natural Resources, as part of the ongoing SCORP process shall specifically address the objectives and policies of this Chapter and especially those related to unique coastal recreational opportunities, access, park supply, the use of government lands and man-made recreational opportunities.

(3) Procedural Guideline: All agencies shall refer to the Statewide Comprehensive Outdoor Recreation Plan (and its related documents) as the source for the recreational plans, priorities and needs of the State.

There remains three sub-policies which need separate attention as well as one other guideline which is related to one of the sub-policies just considered (access). These will each be treated separately because they involve very different concerns.

Policy (1)(B)(ii): Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by developments; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable.

Comment #1: There is a need to assign this responsibility to a specific agency.

The issues raised by "replacement" and/or "compensation" are likely to be difficult to resolve because many agencies may have jurisdiction in this area. Conflicting demands by those agencies and inconsistent interpretations of this language could make the administration of this provision a source of significant problems. Therefore, the implementation of this provision should be assigned to one agency in order to assure consistency in application. This

provision should also be tied directly to ongoing recreational planning. It should, therefore, be assigned to the DLNR.

The use of shoreline (below the vegetation line) and off-shore lands, including its alteration, is by definition the use of State lands. As such it is already subject to procedures set forth in Chapter 171, HRS. There is no reason to create a new process for coastal resources when the Chapter 171 provisions exist. It is, however, necessary to tie the above policy directly to Chapter 171 in order to insure that a second process does not emerge. A guideline would serve this purpose.

(4) Policy Guideline: The damaging of significant recreational resources shall be treated as a disposition of state lands and subject to the procedures of Chapter 171 except that any funds received from such action shall be deposited in a special fund and used only for the purposes of improving recreational opportunities in the State.

Policy (1)(B)(vi): Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible, restore the recreational value of coastal waters.

Comment #1: Some guidance may be helpful to agencies other than the Department of Health as to the effect of this policy.

The Department of Health has the responsibility for adopting such standards and regulating such sources independent of the CZM law. The question concerns the responsibility of their agencies in terms of this jurisdiction it is better to explicitly coordinate the activities of other agencies with the on-going program in the Department of Health. A guideline could serve this purpose.

(5) Procedural Guideline: In any case where water quality may be affected or where point or non-point sources of pollution may be involved, all agencies will refer such matters to the Department of Health for its determination.

This guideline assumes that the Department of Health has the authority necessary to regulate both point and non-point sources of pollution. There seems no question that there is sufficient authority

in terms of point source pollution. There may, however, be some problem with the non-point sources. While it is possible to construct an argument that under state law such power is vested in the DOH, another solution is to provide some explicit statement as to this authority in the form of guidelines. Such a guideline might read as follows:

(6) Policy Guideline: The Department of Health, in its regulation of injection wells, cesspools, soil-disturbing activities and other non-point sources of pollution, shall protect the recreational value of estuaries, embayments and other ecosystems with poor water circulation.

Policy (1)(B)(viii): Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.

Comment #1: No guideline should be added at this time.

In light of the current controversy over the park dedication provisions of Sec. 46-6, HRS, it seems inappropriate to expand on this provision. What the Legislature will probably be facing in the next few years is a fundamental question as to the utility and fairness of the dedication statute. Once that decision is made, this section should be re-examined.

There remains one further matter to be considered. Earlier, the sub-policy [(1)(B)(iii)] relating to access was considered as part of the overall planning by the DLNR in the area of recreational resources. The National CZM Act provides funds for the acquisition of public access through section 315 of that Act. Because the DPED is responsible for submitting a program of shoreline acquisition (as the State's CZM lead agency) the potential for conflict exists between the DPED and DLNR. A guideline could help prevent such a conflict.

(7) Procedural Guideline: The DPED, in the preparation of a program for shoreline access acquisition pursuant to Sec. 315 of the National CZM Act shall consult the Department of Land and Natural Resources so that the program is consistent with the recreational policies and priorities of the State.

SECTION II

A COMPILATION OF DRAFT GUIDELINES FOR HAWAII'S CZM LAW

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A COMPILATION OF DRAFT GUIDELINES FOR HAWAII'S CZM LAW

Following discussions with the SCF, the discussion papers and the guidelines contained in those papers were revised. Those revisions were presented in Section I. It became apparent, however, that the coverage of the discussion papers, and the placement of the guidelines in a narrative context, made the guidelines package difficult to use in making recommendations and in decision-making. In order to facilitate these processes, the guidelines themselves were removed from the discussion papers and presented in this compilation. The order of the guidelines with each objective/policy category is exactly the same as in the discussion papers on the categories.

SECTION II

A COMPILATION OF DRAFT GUIDELINES FOR HAWAII'S CZM LAW

I. Recreational Resources

(1) Procedural Guideline: The Department of Land and Natural Resources, in consultation with other state departments, the county departments of parks and recreation and other appropriate county agencies, as well as other interested parties, shall develop a program to:

(1) determine overall State interests, priorities and objectives in coastal recreation planning and managing;

(2) assure continued integration of County recreation programs with SCORP priorities; and

(3) develop methods (including, but not limited to, proposed legislation, inter-agency agreements, and the delegation of authority) for resolving conflicts among agencies with jurisdiction over recreational resources.

(2) Policy Guideline: The Department of Land and Natural Resources, as part of the ongoing SCORP process shall specifically address the objectives and policies of this Chapter and especially those related to unique coastal recreational opportunities, access, park supply, the use of government lands and man-made recreational opportunities.

(3) Procedural Guideline: All agencies shall refer to the Statewide Comprehensive Outdoor Recreation Plan (and its related documents) as the source for the recreational plans, priorities and needs of the State.

(4) Policy Guideline: The damaging of significant recreational resources shall be treated as a disposition of state lands and subject to the procedures of Chapter 171 except that any funds received from such action shall be deposited in a special fund and used only for the purposes of improving recreational opportunities in the State.

(5) Procedural Guideline: In any case where water quality may be affected or where point or non-point sources of pollution

may be involved, all agencies will refer such matters to the Department of Health for its determination.

(6) Policy Guideline: The Department of Health, in its regulation of injection wells, cesspools, soil-disturbing activities and other non-point sources of pollution, shall protect the recreational value of estuaries, embayments and other ecosystems with poor water circulation.

(7) Procedural Guideline: The DPED, in the preparation of a program for shoreline access acquisition pursuant to Sec. 315 of the National CZM Act shall consult the Department of Land and Natural Resources so that the program is consistent with the recreational policies and priorities of the State.

II. Historic Resources

(1a)* Definitional Guideline: "Significant archaeological resources" are those historic and pre-historic resources that are within the meaning of "historic property" as defined in Section 6E-2(2), HRS and that are significant in Hawaiian and American history and culture.

(1b) Definitional Guideline: "Significant archaeological resources" are those historic and pre-historic sites and areas which are either on or eligible for the Hawaii Register of Historic Places or which are on the National Register.

(2a) Procedural Guideline: The appropriate agency or agencies, shall survey, map, and analyze the regional distribution of historic and pre-historic resources and maintain an updated information file so that interested persons can identify known sites and areas of historic and pre-historic significance and areas of potential discovery of significant archaeological resources.

(2b) Procedural Guideline: The Department of Land and Natural Resources, in coordination and consultation with, the County Planning Departments, shall survey, map, and analyze the regional distribution of historic and pre-historic

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* Alternative guidelines prepared to accomplish the same purpose as denoted by the use of alpha characters to follow the number of the guideline.

resources and maintain an updated information file so that interested persons can identify known sites and areas of historic and pre-historic significance and areas of potential discovery of significant archaeological resources.

(3a) Procedural Guideline to SMA Authority: The Authority shall seek, in consultation with the State Historic Preservation Officer, where warranted, to determine whether historic resources are present on development sites before a permit is issued.

(3b) Procedural Guideline to SMA Authority: The Authority shall require, in consultation with the State Historic Preservation Officer, where necessary, detailed studies which survey, map, describe the physical characteristics of, and specify the mitigation measures undertaken to protect historic resources on development sites prior to taking action.

(4) Procedural Guideline: The State Historic Preservation Officer and the lead agency shall request all federal agencies controlling or leasing property in the State to report, within one year, the extent to which they have complied with Federal Executive Order 11593, the schedule for completing the survey of unsurveyed lands or waters, and, the findings of any completed work.

(5a) Policy Guideline: Where unanticipated archaeological resources are found, development should be halted or restricted in order to provide a sufficient opportunity to analyze the site and undertake reasonable mitigation measures.

(5b) Policy Guideline to SMA Authority: As a condition to granting permit approval, the SMA authority shall require the developer to immediately inform the authority of any unanticipated discovery of historic resources; whereupon, the authority shall make a determination as to whether further study of the site area is needed. The authority shall inform the public of any decisions.

(6a) Substantive Guideline: In determining how best to preserve historic resources, all agencies shall adhere to the following criteria:

(i) Where the remains and artifacts can be preserved in their original site and where such preservation would provide the best setting for the resources,

such display should be encouraged;

(ii) Where historic resources can be maintained in their original site, and, still, through siting and design requirements, allow for the development of the area, agencies shall make such requirements;

(iii) Where historic resources cannot be preserved and at the same time allow for development, all reasonable attempts should be made to salvage such resources and to provide for their display;

(iv) Where salvage is not possible, the decision as to whether to preserve the site or to allow development should take into consideration the following factors: (a) the importance of the development to the State's economy or to the public health, welfare and safety; (b) the importance of the resource to our understanding of Hawaii's past; and, (c) the availability of similar sites, remains or artifacts in other areas.

(6b) Substantive Guideline: In determining when, and how best, to preserve historic resources, all agencies shall adhere to the following criteria:

(i) Preservation of the remains and artifacts in their original site shall be provided for unless:

(a) the development is of statewide significance and for the public good should proceed inspite of the presence of historic resources and;

(b) siting and design requirements cannot be used to allow both the development and the preservation of the resource to occur simultaneously.

(ii) Where development is allowed to take place, all reasonable efforts shall be made to salvage historic resources and to provide for their display.

(iii) Where substantially similar sites, remains or artifacts exist from or at other sites, agencies may consider that in deciding whether to preserve those historic resources.

(7) Definitional Guideline: The "state goals" for historic resources management are stated in Section 6E-1, HRS, and all agencies will support those goals.

(8) Procedural Guideline: The State Historic Preservation Officer shall provide assistance to all agencies in the management of historic resources and shall maintain lists of resource persons and preservation methods.

(9) Procedural Guideline: The Department of Land and Natural Resources shall promulgate rules to implement the historic preservation program in the coastal zone management area which shall be binding on all agencies.

(10) Procedural Guideline: The State Historic Preservation Officer, the Department of Planning and Economic Development and the appropriate county agencies shall explore and work to establish a program of incentives to encourage private action in carrying out the historic preservation program.

III. Scenic and Open Space Resources

(1) Definitional Guideline: "Coastal scenic resources" shall include but not be limited to aesthetically significant view sheds, open space areas, view corridors, view planes and sites which encompass views of lands and waters within the CZM area.

(2) Definitional Guideline: "Coastal open space resources" shall include but not be limited to vegetated or landscaped lands in the coastal zone management area on which a minimum of man-made structures have been constructed.

(3a) Procedural Guideline: The _____ (agency or agencies) in consultation with the public and the develop-

ment industry, shall survey, assess and map scenic coastal resources and maintain a register of such information so that members of the public can identify valued scenic resources in the coastal zone management area.

(3b) Procedural Guideline: The Department of Planning and Economic Development, in coordination and consultation with the County Planning Departments, and in consultation with members of the public and the development industry, shall survey, assess, and map scenic coastal resources and maintain a register of such information so that members of the public can identify valued scenic resources in the coastal zone management area.

(4) Policy Guideline: Applications for special management permits shall:

(a) identify scenic resources on the project site and adjacent properties;

(b) explain how the proposed development will affect public views of coastal scenic resources, and

(c) explain how proposed development will affect public views to and along the shoreline.

(5a) Definitional Guideline: "Alteration of natural land forms" means any modification of land previously unaltered by man's activities, and which are not limited to, grading, cutting and filling, dredging and excavating.

(5b) Definitional Guideline: "Alteration of natural land forms" means any modification of land areas, except man-made land areas, through activities including, but not limited to, grading, cutting and filling, dredging and excavating.

(6a) Definitonal Guideline: "Alteration of existing public views to and along the shoreline" means any modification of views to the shoreline from the state highway nearest the coast and views along the shoreline from public shoreline recreation areas, through the removal of vegetation, except crops, and the construction of structures.

(6b) Definitional Guideline: "Alteration of existing public views to and along the shoreline" means any modification of views

to the shoreline from the state highway nearest the coast and from public recreation areas in the coastal zone management area and views along the shoreline from public shoreline recreation areas, through the removal of vegetation, except crops, and the construction of structures.

(7) Procedural Guideline: The County Planning Departments shall survey, assess and inventory the regional distribution of land forms and existing public views to and along the shoreline, and shall recommend changes needed in the General Plans and related documents and ordinances to the appropriate bodies.

(8) Procedural Guideline: County Planning Departments shall follow the register of scenic resources in reviewing and recommending revisions, as necessary, to their respective General Plans and related documents, in order to ensure that management of natural land forms and existing public views to and along the shoreline are in compliance with the policies and objectives relating to coastal scenic and open space resources.

(9a) Procedural Guideline: Agencies shall require, where warranted, detailed studies which assess the impacts which proposed developments may have on natural land forms and existing public views to and along the shoreline, and may require, as necessary, mitigation measures, including alternative siting within the development site and alternative structural designs, in order to minimize adverse visual impacts, before a permit is issued.

(9b) Procedural Guideline: Agencies shall, where warranted, determine whether proposed developments will have visual impacts upon natural land forms and existing public views to and along the shoreline and shall require, as necessary, mitigation measures, including alternative siting within the development site and alternative structural designs, in order to minimize adverse visual impacts, before a permit is issued.

(10a) Procedural Guideline: The County Planning Departments, in consultation with the public, shall survey and assess shoreline scenic and open space resources to identify these areas which may appropriately be included in the shoreline setback area as defined in Chapter 295, Part II, H.R.S. Recommendations shall then be submitted to the county councils and the State Land Use Commission for possible inclusion in the shoreline setback area.

(10b) Procedural Guideline: County Planning Departments shall follow the register of scenic resources in identifying appropriate areas to be included in the shoreline setback area as defined in Chapter 205, Part II, H.R.S. Recommendations shall be submitted to the county councils and the State Land Use Commission for possible inclusion in the shoreline setback area.

(11a) Policy Guideline: Unless a development qualifies as "coastal dependent", agencies shall require such developments to be sited outside of the coastal zone management area except where such a requirement would result in significant economic burden to a property owner.

(11b) Policy Guideline: Agencies shall require inland siting when it can be accomplished without significant economic burden to the developer.

IV. Coastal Ecosystems

(1) Procedural Guideline: The Department of Planning and Economic Development shall establish a CZM program technical advisory committee to advise on: 1) technical information needs; 2) research and funding priorities; 3) the technical adequacy of research designs proposing the use of CZM funds for coastal ecosystem studies. The technical advisory committee shall be composed of representatives from DPED, appropriate state agencies, county planning departments, appropriate departments of the University of Hawaii, Corps of Engineers, and other interested and affected parties.

(2) Procedural Guideline: The SMA authority shall within one year of the effective date of this act identify all coastal ecosystems and delineate their geographic extent. These maps will be adopted as rules and regulations pursuant to Chapter 91. Once identified, these ecosystems will be assigned to one of three categories:

(1) Preservation. All valuable coastal ecosystems shall be included in this category. Only non-consumptive uses such as scientific research, outdoor recreation, or nature appreciation shall be permitted. For the purpose of this section, non-consumptive uses are those which leave the ecosystem in an undisturbed condition after the use.

(2) Conservation. Ecosystems shall be designated as conservation if they are (i) terrestial areas containing unmanaged vegetation and (ii) streams, low wetlands, coastal wetlands, estuaries, brackish water lakes except areas specified for preservation and water bodies functioning as effluent ponds and ditches. Both consumptive (ecosystem disturbing) and non-consumptive uses will be permitted provided that the uses do not conflict with each other and do not reduce the remaining natural quality of the ecosystem.

(3) General Use. All other ecosystems not within the above categories shall be placed within this category and intensive, developmental use of these areas will be permitted.

(3) Definitional Guideline: "Valuable coastal ecosystems" are those ecosystems which are of significant biological or economic importance. Coastal ecosystems of significant biological or economic importance are those ecosystems that (1) are scarce or limited to specific geographic areas, (2) are especially vulnerable or susceptible to alteration and destruction, (3) provide habitats for commercial or recreational resources and activities such as fishing, and (4) demonstrate a low potential for regeneration or are isolated from similar ecosystems that would enable regeneration. Such ecosystems include, but are not limited to:

i) terrestial areas dominated by coastal strand ecosystems wich provide habitat for or buffer the habitat of threatened or endangered native avifauna;

ii) perennial streams, anchialine pools, brackish water lakes, and estuaries that are dominated by native aquatic fauna and provide habitat for or buffer the habitat of threatened or endangered native aquatic species, and other water bodies which are vital to the life support of threatened or endangered seabirds or water birds; and

iii) turtle nesting beaches.

(4) Policy Guideline: Ecological types which are geographically limited or which provide habitat for native species whose numbers are limited should be considered candidates from conservation to preservation if past disturbance is limited to degradation which is naturally or managerially reversible within a few years.

(5) Policy Guideline: Ecosystem types which are designed for general use but which have resource attributes attractive for multiple uses should be considered candidates for conservation if past disturbance is limited to degradation which is naturally or managerially reversible within a few years.

(6) Definitional Guideline: "Coastal zone management area" also includes all lands and waters seaward of the county special management areas and within the waters of the State's territorial jurisdiction.

(7) Policy Guideline: The Conservation District Use Permit shall be the Coastal Zone Management permit for all waters within the territorial boundaries of the State of Hawaii. All State waters will be classified in the Resource subzone or any more restrictive subzone and subject to the limitations on permitted uses that are contained in the Regulations governing those subzones.

(8) Procedural Guideline: The Department of Land and Natural Resources shall develop a viable coral habitat mapping program that shall specifically identify areas where commercial coral harvesting or coral habitat disturbances are taking place. This investigation shall provide an accurate locational analysis of where identifiable coral habitats are located, where coral harvesting activities are presently taking place, where coral harvesting activities may occur in the future, and where coral habitats are in danger of being ecologically damaged or modified.

(9) Procedural Guideline: The Department of Land and Natural Resources shall develop a coral habitat resource management program aimed at managing coral harvesting activities (commercial and non-commercial) and coral habitat disturbances within State waters. Specific coral harvesting quotas and harvesting permit security bonds shall be required for commercial coral harvesting activities based upon (1) maximum sustainable yield evaluation, (2) environmental assessment of flora and fauna dependence, (3) available educational

and recreational opportunities, and (4) economic potentials of coral and fishery resources. Commercial coral harvesting shall not be permitted within identifiable coral habitats until coral harvesting quota limits and security bonds are established. Pursuant to provisions of Chapter 343, HRS, an Environmental Impact Statement shall be required for all commercial coral harvesting activities within State waters. The DLNR shall also be held responsible for coordinating and conducting a review of coral harvesting activities at the time State commercial coral harvesting permits are issued. These reviews shall serve to monitor commercial coral harvesting activities and evaluate possible ecological disturbances or modifications on a yearly basis.

(10) Policy Guideline: The DLNR shall consider coral as a "public resource" and therefore the property of the State of Hawaii. The removal of coral resources for the commercial purposes shall be subject to the imposition of just compensation amounting to a royalty or user fee of not less than ten (10) percent or no more than twenty (20) percent of the assessed fair market value.

(11) Procedural Guideline: Commercial coral harvesters shall be required to periodically report to appropriate governmental agencies, subject to public inspection, specific and detailed information relating to the particular coral habitat and ecology in which commercial harvesting activity is occurring, and for reviewing the impacts of that activity on the natural marine ecology.

(12) Procedural Guideline: The Department of Health and the Department of Land and Natural Resources, in consultation with appropriate Federal, State, and County agencies shall adopt joint regulations governing minimum stream flow levels in all perennial streams of high natural quality. Such regulations shall be adopted pursuant to Chapter 91 and shall reflect state water quality standards as well as the state's interest in preserving adequate supplies of water.

V. Economic Uses

(1) Policy Guideline: All agencies, in the siting of public facilities shall consider the effect that such facilities may have in encouraging or discouraging coastal development and shall insure that those effects are consistent with the objectives, policies and guidelines related to coastal development.

(2) Policy Guideline: All agencies shall implement a policy of allowing only those economic uses which are coastal dependent to be sited in the coastal zone management area. All non-coastal dependent developments should be sited in inland areas.

(3a) Policy Guideline: Coastal developments should be concentrated unless such concentration would result in significant detrimental effects on one or more of the developments in that area.

(3b) Policy Guideline: Coastal development shall be concentrated only to the extent necessary to preserve scenic, open space, recreational, natural and historic resources determined to be significant under this program.

(3c) Policy Guideline: Coastal development shall be concentrated to the extent necessary to preserve scenic, open space, recreational, natural and historic resources and determined to be significant under this program unless such concentration would result in significant detrimental effects to one or more of the developments in that area.

(4) Policy Guideline: The Counties in their General Plans and related documents and ordinances shall designate areas appropriate for coastal dependent developments. Wherever possible consultation with affected agencies and individuals is encouraged. In designating these areas the counties shall use the objectives, policies and guidelines to determine which resources must be preserved and shall additionally preserve such additional areas as are necessary to provide for future land management decisions.

(5) Policy Guideline: All agencies shall refer to the relevant county plan or related document or ordinance in determining the appropriate site for proposed coastal dependent developments.

(6) Policy Guideline: Once the counties have designated areas which are appropriate for coastal dependent development, no agency shall permit development outside those areas.

(7a) Definitional Guideline: "Coastal dependent developments" are harbors and ports, visitor industry facilities (including associated facilities), energy generating facilities and aquaculture operations.

(7b) Definitional Guideline: "Coastal dependent development" means harbors and ports, visitor industry facilities (including associated facilities), energy generating facilities, aquaculture operations and any other development for which it can be demonstrated that siting in the coastal zone is essential if it is economically feasible; provided, however, that this shall not include housing in presently undeveloped areas unless the public good requires such siting or unless such housing is associated directly to a coastal dependent development.

(8) Policy Guideline: All agencies shall use the State Plan as enacted by the Legislature in determining the importance of a particular development to the State's economy.

(9) Policy Guideline: Agricultural uses, especially sugar cane and pineapple shall be given the highest priority unless alternate uses are clearly in the long-term economic interests of the State.

(10) Policy Guideline: Where conflicts develop between existing coastal activities and new or proposed activities, priority shall be given to existing uses unless to do so would not be in the long run economic interests of the State and the County in which the use is located.

(11) Policy Guideline: In the siting of harbors, consideration shall be given to the State Harbors Master Plan, the transportation needs of the affected area, the extent to which existing harbors fulfill those needs, and, the views expressed by potential users of such facilities.

(12) Policy Guideline: All agencies shall minimize the establishment of isolated hotel and resort developments unless such developments can be shown to be economically viable and not in conflict with the economic or environmental resource values in the area.

(13) Policy Guideline: In siting energy generating facilities, agencies shall consult the State Plan and allow coastal use only to the extent that the facility is in compliance with the energy resource goals of the state.

(14) Procedural Guideline: In minimizing the visual and environmental effects of such developments, agencies shall refer to the objectives, policies and guidelines relating to open space and scenic resources, historic resources, recreation resources and coastal ecosystems.

(15) Policy Guideline: The social and cultural impact of any development on a particular area shall be considered by all agencies and adverse impacts shall be minimized to the extent practicable.

(16) Policy Guideline: In minimizing the impacts of a development on the coastal zone, agencies shall avoid transferring those impacts to inland areas wherever possible.

VI. Coastal Hazards and Protection of Beach Systems

(1) Policy Guideline: The Department of Planning and Economic Development and State and county civil defense agencies shall support programs to educate the public about the location of areas that might need to be evacuated because of tsunami, storm waves, or floods. The Department of Planning and Economic Development and State and county civil defense agencies shall also support programs to educate the public about the reasons for regulating development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard.

(2) Procedural Guideline: Within one year of the effective date of this Act, after consultation with the United States Army Corps of Engineers and appropriate departments of the University of Hawaii, the Department of Planning and Economic Development shall report to the Legislature the probable locations, if any, of fifty year storm wave hazard areas in Hawaii which are not included in tsunami hazard areas shown on Federal Flood Insurance Program maps. If storm wave hazard areas are not included in tsunami hazard maps, then the Department shall also report on techniques and measures that would be appropriate to amend Federal Flood Insurance Program maps to include fifty year storm wave hazard areas.

(3) Definitional Guideline: "Shoreline erosion hazard areas" means lands inland of the shoreline which are likely to be transformed into lands seaward of the shoreline at any time within a period of fifty years as a result of natural processes.

(4) Procedural Guideline: The Department of Planning and Economic Development, in consultation with the Department of Land and Natural Resources, the United States Army Corps of Engineers, the county planning departments, and appropriate departments of the University of Hawaii, shall prepare studies

of long-term natural Hawaiian sand processes including gains, transport, and losses of sand in near-shore littoral cells. Such studies of sand processes shall be used by the Department of Planning and Economic Development to prepare and update maps of areas which are likely to become shoreline erosion hazard areas as a result of beach retreat and to identify areas where sand mining will not have adverse impacts on beach processes.

(5) Procedural Guideline: The county planning departments, in consultation with the Department of Land and Natural Resources and the Department of Planning and Economic Development, shall, within one year of the effective date of this Act, prepare an inventory of existing seawalls, revetments, groins, breakwaters, and other shoreline and near-shore structures and development, regardless of cost of fair market value. The inventories shall note those structures and developments which received all necessary permits and approvals for construction and those that were not approved.

(6) Policy Guideline: Agencies shall not issue any permit or approval for construction of any seawall, revetment, groin, breakwater, or similar shoreline or near-shore structure or development, regardless of total cost or fair market value, unless such structure or development is designed, or conditions are imposed to guarantee safe public thoroughfare along the shoreline during all seasons of the year and unless either:

(a) such public structures or development is necessary for reasons of public health or where there are overwhelming benefits to the general public; or,

(b) such structure or development is necessary to protect public structures existing as of the effective date of this Act with a total cost or fair market value in excess of $250,000; or

(c) a qualified geologist or ocean engineer first certifies that (i) such structure or development shall not decrease the size of any beach and (ii) such structure or development would be necessary to halt long-term shoreline erosion; or

(d) the county special management area authority first determines that (i) such structure or

development would be necessary to protect an existing private dwelling unit or an existing private structure with a cost or fair market value in excess of $25,000, (ii) the beach fronting the existing private dwelling unit or structure is not of sufficient recreational value or potential to justify prohibition of shoreline or near-shore structures or development, and (iii) the proposed shoreline or near-shore structure or development would not adversely affect the size of any beach except the beach fronting the existing private dwelling unit or structure, provided that shoreline and near-shore structures or development proposed to protect an existing private dwelling unit or structure shall not be issued any permit or approval when the existing private dwelling unit or structure is fronted by a beach which is wider than fifty feet, between the vegetation line and the mean lower low water line, during any season of the year.

(7) Policy Guideline: Agencies shall not issue any permit or approval for construction of:

(a) any new single family resident which is not part of a larger development, or

(b) any new structure or structures the total cost or fair market value of which exceeds $25,000, or

(c) any rubble or solid wall or structure which might become a shoreline seawall, revetment, groin, or breakwater as a result of beach retreat, regardless of cost or fair market value,

within any shoreline erosion hazard area unless the appropriate county planning director first certifies that a new protective seawall, revetment, groin, breakwater or similar shoreline or near-shore structure would subsequently be permitted pursuant to (Guideline 6).

(8) Procedural Guideline: Within two years of the effective date of this Act, the county planning departments, in

consultation with the Department of Land and Natural Resources and the Department of Planning and Economic Development, shall adopt maps of shoreline erosion hazard areas as rules and regulations pursuant to Chapter 91. The county planning department shall also adopt rules and regulations governing amendments to shoreline erosion hazard maps to improve their technical adequacy on the basis of studies and appeals. Such rules and regulations shall require that a qualified geologist evaluate evidence presented in appeals and may set reasonable fees to cover all costs of processing appeals.

(9) Policy Guideline: Pending amendments based on studies or appeals, maps of shoreline erosion hazard areas shall initially include all lands and waters up to and including 150 feet inland of the shoreline at all beaches.

(10) Definitional Guideline: "Coastal zone management area" also includes all lands and waters seaward of the county special management areas and within the limits of the State's territorial jurisdiction.

(11) Policy Guideline: Agencies shall not issue any permit or approval for:

(a) sand mining or dredging of holes or channels seaward of the shoreline,

(b) sand mining or dredging of permanent holes over 1,500 cubic feet in area on lands designated as tsunami and storm wave hazard areas on Federal Flood Insurance Program maps, or

(c) removal of sand from streams, drainage channels, canals, harbors, and areas where there is no legal shoreline.

except in cases where the permit or approval imposes sufficient conditions to prevent adverse effects on the size of any beach. Such conditions shall be determined and/or approved by a qualified geologist.

(12) Procedural Guideline: Within one year of the effective date of this Act, the county planning departments, in consultation with the United States Geological Survey and the Department of Planning and Economic Development, shall

determine and adopt maps of coastal areas subject to relatively high risk of catastrophic subsidence as rules and regulations pursuant to Chapter 91.

(13) Policy Guideline: Special management area and building permits shall not be issued for any of the following kinds of development in coastal areas subject to relatively high risk of catastrophic subsidence as shown on county planning department maps:

(a) any new lodging or dwelling unit, regardless of whether or not it is part of a larger development,

(b) any public development required to obtain a special management area permit which in the judgement of the special management permit authority would not provide benefits which would justify the risk of public costs following catastrophic subsidence, or

(c) any private development required to obtain a special management area permit unless conditions are imposed to ensure that no person shall be reimbursed by public or publicly subsidized insurance or public grants for property damage caused by catastrophic subsidence.

(14) Policy Guideline: [Inappropriate language would need to be deleted from Chapter 205-33, 205-35, and 205-36. A new sentence would be required. "A variance shall be granted for such structure, activity, or facility if, after a hearing pursuant to Chapter 91, such government body as designated in this section finds in writing, based on the record presented, both: (1) that such structure, activity or facility is in the public interest; and (2) that such structure, activity or facility is in compliance with all the policies and guidelines contained in Chapter 205A.]

(15) Policy Guideline: [A new section would be needed in Chapter 246 providing that when development is restricted, pursuant to Chapter 205A, in shoreline erosion hazard areas and in coastal areas subject to relatively high risk of catastrophic subsidence, then affected property shall be assessed for tax purposes at some rate which takes into account these restrictions.]

(16) Procedural Policy Guideline: Each county council shall designate an agency responsible to regulate the rate of runoff from development. Within two years of the effective date of this Act, agencies designated to regulate runoff from development shall adopt rules and regulations pursuant to Chapter 91 to accomplish the following purposes:

(1) to ensure that for all development on areas of two acres or more which drain into natural drainage channels, that during rainstorms the rate of water flow at the makai property boundary in the natural drainage channels which occurred before the development shall not be increased by the development, provided that exemption from this requirement shall be given when (a) there is no risk of affected natural drainage channels causing flooding of urbanized coastal areas and (b) there is no risk of an increase in erosion in affected natural drainage channels as a result of an increase in the rate of water flow during rainstorms, and

(2) to ensure that for all development on areas of two acres or more which drain directly onto urbanized coastal areas, that during rainstorms the rate of runoff onto urbanized coastal areas which occurred before the development shall not be increased by the development, and

(3) to discourage channelization of natural drainage courses and to encourage disposition of development runoff of land by means of ponding, by means of permeable pavement, and by other means which would prevent flooding of urbanized coastal areas and prevent sediment from reaching the ocean and perennial streams.

VII. Managing Development

(1) Policy Guideline: All government agencies with permit authority shall support activities promulgated by the Legislature which are directed at the coordination of regulatory procedures.

(2) Procedural Guideline: The DPED, in the development of coordination and simplification proposals, shall attempt to coordinate efforts directed at approving regulatory procedures.

(3) Policy Guideline: All government agencies, in the review and revision of rules, regulations, and procedures, shall keep in mind the goals of simplifying permit application requirements and the prompt processing of those applications.

(4) Procedural Guideline: Government agencies shall enforce all existing laws, ordinances, rules and regulations pertaining to the prevention or prohibition of unauthorized structures and the establishment of residences on shoreline lands and waters, especially within the Shoreline Setback area.

(5) Procedural Guideline: All government agencies shall establish where possible, similar time limits for the consideration of permit applications.

(6a) Definitional Guideline: "Development" does not include (see draft list of non-controversial development on following page) provided that the proposed actions do not involve an activity which must obtain a permit from any Federal agency and do not have significant environmental impact.

(6b) Definitional Guideline: "Development" means, on land, in or under water, any of the following, the total cost of fair market value of which exceeds, or which significantly affects the coastal zone, taking into account potential cumulative effects, or which violates any of the objectives and policies set forth in this chapter: See 205A-22 (2) for the rest (follows "...potential cumulative effects:")

(6c) Procedural Guideline: Public hearings need not be held for (see draft list of non-controversial development on page 12) provided that no public hearing is requested by a county planning department or any interested member of the public. County planning departments shall develop procedures to inform the public when permit applications are filed for such developments.

(6d) Procedural Guideline: Public hearings need not be held provided that actions do not involve an activity which must obtain a permit from any Federal agency, do not have significant environmental impacts, and do not violate any of the objectives and policies set forth in this chapter, and provided further that no public hearing is requested by a county planning department or any interested member

of the public. County planning departments shall develop procedures to inform the public when special management area permit applications are filed.

#1 from SCF task force draft (7) Procedural Guideline: Government agencies should review all ordinances, rules, regulations, pertaining to "coastal" related activities to insure the greatest degree of clarity, uniformity and consistency possible. Effort should be made to eliminate conflicting rules and regulations between or within agencies.

#5 from SCF task force draft (8a) Procedural Guideline: All government agencies with permit authority for coastal related activities should be encouraged to scale their data requirements for such permits to the size and impact of the proposed activity.

(8b) Procedural Guideline: Within 1 year, all agencies shall develop explicit guidelines for data requirements for all permits within their jurisdiction and the rationale for such guidelines.

#3 from SCF task force draft (9) Procedural Guideline: The DPED shall explore the cost and feasibility of establishing a coordinated data management system or "databank" which would contain as much information as possible about specific areas of the State. The data bank should contain two major types of information: (1) basic data, such as demographic, physical, economic, environmental, historical, and cultural data; and a bibliography of materials; and (2) information on development permit and approval requirements in the State at all levels of government. The purpose of the "data bank" would be to provide base line data which would be meaningful and useful to planners, decision-makers and citizen groups. Funding of the DPED's study shall be reported to the Legislature within on year of the enactment of this guideline.

(10) Procedural Guideline: The DPED shall facilitate the coordination of information gathering and dissemination among State planning efforts. Among its major tasks in this area should be the following: (1) identify the potential decision-making clients so as to coordinate formats for information storage, map scales, data sources and similar issues; (2) propose mechanisms for periodic updating of information; and (3) insure public access to such information.

(11) Procedural Guideline: All State agencies engaged in the development of plans shall support the DPED's effort to improve the coordination of information gathering and dissemination for coastal zone decision-making.

(12) Procedural Guideline: All government agencies shall support the efforts of the Federal Executive Board, the County Central Coordinating Agencies and the DPED in maintaining, updating, and expanding their permit registers.

(13) Definitional Guideline: "Significant coastal development" means any development in the coastal zone management area meeting one or more of the following conditions: (1) will be the subject of a public hearing pursuant to §205A-29, HRS; (2) will reduce water flow in a perennial stream; (3) requires a permit from any Federal agency; (4) a county planning department considers to have potential significant impacts on lands or waters seaward of the inland boundary of the Special Management Area; and (5) a county planning department considers to be sufficiently controversial to warrant a public hearing.

(14) Procedural Guideline: All agencies shall encourage public participation by holding public information meetings, especially at the locations of the projects, early in the planning and review process of significant coastal developments.

#4 from SCF task force draft (15) Policy Guideline: The adoption of the Hawaii Coastal Zone Management Program should not mean the end of meaningful citizen input provided by the Statewide Citizens Forum. There will be a continuing need for review of the objectives, policies and guidelines as well as review of the individual counties' activities to amend the present Special Management Areas to bring them into conformity with State requirements.

(16) Procedural Guideline: The DPED shall conduct an extensive public awareness campaign including, but not limited to, the following elements: timely notices of hearings and meetings; public involvement in the ongoing review, evaluation, and modification of the CZM Program; dissemination of information by means of various media, educational materials, published reports, personal staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities.

SECTION III

A GUIDE TO THE GUIDELINES

SECTION III

A GUIDE TO THE GUIDELINES

The "Guide to Guidelines," as discussed in the Introduction of this report, was prepared by the Department of Planning and Economic Development and the Coastal Zone Management Staff of the Pacific Urban Studies and Planning Program. The purpose of the Guide was to provide a concise summary of the preliminary decisions over whether the guidelines would be placed in the CZM law, be included in drafts amending other laws and resolutions, or dropped from further discussion.

A GUIDE TO THE GUIDELINES

	GUIDELINES (SEC. 2)	SMA GUIDELINES (SEC. 26)	RECOMMENDATIONS	DROPPED
RECREATIONAL RESOURCES	1, 2, 3, 4, 5, 6*		7	
HISTORIC RESOURCES	1, 2, 6, 7, 10	5, 9	4	3, 8, 9
SCENIC & OPEN SPACES RESOURCES	1, 2, 6	4		3, 5, 7, 8, 9, 10, 11
COASTAL ECOSYSTEMS	3, 12		1, 6, 8, 9, 10, 11	2, 4, 5, 7
ECONOMIC USES	3, 4, 7, 8, 9, 12, 13			1, 2, 5, 6, 10, 11, 14, 15, 16
COASTAL HAZARDS	1, 3, 9, 12	13	4, 5, 6, 7, 8, 10, 11, 14, 15, 16	2
MANAGING DEVELOPMENT	3, 4, 5, 7, 8, 14		1, 2, 6, 9, 10, 16	11, 12, 13, 15

* 5, 6 now listed under coastal ecosystems.

SECTION III

A GUIDE TO THE GUIDELINES

Recreational Resources

Guideline Number	Placement
1 to 4	are in the guidelines bill
5 and 6	are in the guidelines bill but have been placed in the coastal ecosystems section
7	deals with the inter-departmental coordination of a federal grant application. This could be adequately handled by a legislative resolution

Historic Resources

Guideline Number	Placement
1 and 2	are in the guidelines bill
3	was an alternative strategy to guideline 2 and the latter was chosen
4	concerns the implementation of a Presidential executive order and involves a process which should have been completed already. Legislative resolution would be an adequate way to handle this.
5	was added to the SMA Guidelines bill
6 and 7	are in the guidelines bill
8	was dropped partly because it is a restatement of existing law and partly because suggestions as to techniques to be employed by the agency might be more appropriate in a legislative resolution.
9	was dropped as unnecessary because the rule-making authority and the legal effect of those rules are described in Chapter 6E

10	is in the guidelines bill

Scenic and Open Spaces

Guidelines Number	Placement
1 and 2	are in the guidelines bill
3	was dropped as being too complex an undertaking at the present time
4	is in the SMA guidelines bill
5	was dropped because the term was felt to be self-explanatory.
6	is in the guidelines bill
7	was dropped because it was felt to be premature
8	depended on 3 being in the bill
9	was felt to be adequately handled by 4
10	was dropped because it was felt to be premature
11	deals with coastal dependency and the inland siting of developments. These are dealt with in the economic uses section.

Coastal Ecosystems

Guideline Number	Placement
1	involves a duty of the lead agency and would be more appropriate as an amendment to Sec. 205A-3 ("Lead Agency")
2, 4 and 5	were dropped because they involved a zoning approach to ecosystems which after review seemed inappropriate. Much of the ecosystem mapping will be accomplished as part of the boundary review.

3	is in the guidelines bill
6	involves an amendment to Sec. 205A-1 ("Definitions").
7	was dropped as being unnecessary
8 to 11	were felt to be more appropriately handled through a separate bill on coral removal
12	is in the guidelines bill

Economic Uses

Guideline Number	Placement
1	was dropped as being unnecessary
2	was felt to be overly strong and not in keeping with the flexibility
3 and 4	are included in the guidelines bill
5 and 6	are unnecessary once guidelines 4 is adopted since the counties will have ultimate control in any case.
7 to 9	are in the guidelines bill
10	was intended as an alternative to 9 and since 9 is included, it is dropped
11	was dropped as being inappropriate. It should be part of Ch. 266, H.R.S.
12 and 13	are included in the guidelines bill
14 and 15	were dropped because they added little to the existing provisions.
16	was dropped because it creates a "Catch-22" situation in terms of where impacts can be felt

Coastal Hazards

Guideline Number	Placement
1	was included in the guidelines bill
2	was dropped as inappropriate at the present time
3	was included in the guidelines bill
4 and 5	involve a study and an inventory, both of which should be in the DPED's annual report as funding priorities rather than in the statute
6 to 8, 11 and 14	basically deal with weaknesses in Ch. 205 - Part II (the Shoreline Setback law). These concerns should be dealt with by amending that law.
9	was included in the guidelines
10	should be handled as an amendment to Sec. 205A-1 ("Definitions")
12	was included in the guidelines
13	was included in the SMA guidelines bill
15	involves an amendment of Ch. 246 and is not a guideline
16	should be dealt with as an amendment to Ch. 180C since it deals with deficiences in that law

Managing Development

Guideline Number	Placement
1 and 2	could be better handled through resolutions
3 to 5	are included in guidelines bill
6	should be handled by amending Ch. 205A - Part II.

7 and 8	are included in the guidelines bill
9 and 10	could be handled through resolutions
11	was felt to be unnecessary
12	is unnecessary since the CCAs have this support assured by Act 74, SLH 1977, and the others probably don't need this provision.
13	was dropped because it might increase confusion over the term "development".
14	is in the guidelines
15	is unnecessary since the SCF continues to function
16	this should be in the form of a resolution

SECTION IV

DRAFT BILLS FOR THE GUIDELINES

SECTION IV

DRAFT BILLS FOR THE GUIDELINES

Two draft bills were prepared by the CZM staffs of the Department of Planning and Economic Development and the Pacific Urban Studies and Planning Program over guidelines. These bills were intended to illustrate how a bill for guidelines might read. The first draft bill includes those guidelines which would amend Part I of the CZM law, the part which is applicable to all agencies. The second bill includes those guidelines which would be amended in Part II of the CZM bill, applicable only to the SMA authorities.

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Findings and Purpose.

SECTION 2. Section 205A-2, Hawaii Revised Statutes, is hereby repealed and replaced by a new section to read as follows:

"Section 205A-2 Coastal Zone Management Program; Objectives, and Policies and Guidelines.

(a) The objectives, and policies and guidelines in this section shall apply to both parts I and II of this chapter.

(b) Recreational resources;

(1) Objectives.

(A) Provide coastal recreational opportunities accessible to the public.

(2) Policies.

(A) Improve coordination and funding of coastal recreation planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Encouraging expanded public recreational use of county, State, and federally owned or controlled shoreline lands and waters having recreational value;

(vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect and where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities where appropriate, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.

(3) Guidelines

(A) The Department of Land and Natural Resources, in consultation with other state departments, the county department of parks and recreation, and other appropriate county agencies, as well as to other interested parties, shall develop a program to: (1) determine overall State interests,

priorities, and objectives in coastal recreation planning and management; (2) assure continued integration of County recreation programs with SCORP priorities; and (3) develop methods (including, but not limited to, proposed legislation, inter-agency agreements, and the delegation of authority) for resolving conflicts between the agencies with jurisdiction over recreational resources.

(B) The Department of Land and Natural Resources, as part of the ongoing SCORP process shall specifically address the objectives and policies of this Chapter and especially those related to unique coastal recreation opportunities, access, park supply, the use of government lands and man-made recreational opportunities.

(C) All agencies shall refer to the Statewide Comprehensive Outdoor Recreation Plan (and its related documents) as the source for the recreational plans, priorities and needs of the State.

(D) The damaging of significant recreational resources shall be treated as a disposition of state lands and subject to the procedures of Chapter 171 except that any funds received from such action shall be deposited in a special fund and used only for the purposes of improving recreational opportunities in the State.

(c) Historic resources;

(1) Objectives.

(A) Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

(2) Policies.

(A) Identify and analyze significant archaeological resources;

(B) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(C) Support State goals for protection, restoration, interpretation, and display of historic resources.

(3) Guidelines.

(A) "Significant archaeological resources" are those historic and pre-historic resources that are within the meaning of "historic property" as defined in Section 6E-2(2), HRS and that are significant in Hawaiian and American history and culture.

(B) The "state goals" for historic resources management are stated in Section 6E-1, HRS, and all agencies will support those goals.

(C) The Department of Land and Natural Resources, in coordination and consultation with, the County Planning Departments, shall survey, map, and analyze the regional distribution of historic and pre-historic resources and maintain an updated information file so that interested persons can identify known sites and areas of historic and pre-historic significance and areas of potential discovery of significant archaeological resources.

(D) In determining when, and how best, to preserve historic resources, all agencies shall adhere to the following criteria:

(i) Preservation of the remains and artifacts in their original site shall be provided for unless the development is of Statewide significance and for the public good should proceed inspite of the presence of historic resources and; siting and design requirements cannot be used to allow both the development and the preservation of the resource to occur simultaneously.

(ii) Where development is allowed to take place, all reasonable efforts shall be made to salvage historic resources and to provide for their display.

(iii) Where substantially similar sites, remains or artifacts exist from or at other sites, agencies may consider that in deciding whether to preserve those historic resources.

(E) The State Historic Preservation Officer, the Department of Planning and Economic Development and the appropriate county agencies shall explore and work to establish a program of incentives to encourage private action in carrying out the historic preservation program.

(d) Scenic and open space resources;

(1) Objectives.

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

(2) Policies.

(A) Identify valued scenic resources in the coastal zone management area;

(B) Insure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

(D) Encourage those developments which are not coastal dependent to locate in inland areas.

(3) Guidelines

(A) "Coastal scenic resources" shall include but not limited to aesthetically significant view sheds, open space areas, view corridors, view planes and sites which encompass views of lands and waters within the CZM area.

(B) "Coastal open space resources" shall include but not be limited to vegetated or landscaped lands in the coastal zone management area on which a minimum of man-made structures have been constructed.

(C) "Alteration of existing public views to and along the shoreline" means any modification of views to the shoreline from the state highway nearest the coast and from public recreation areas in the coastal zone management area and views along the shoreline from public shoreline recreation areas, through the removal of vegetation, except crops, and the construction of structures.

(e) Coastal ecosystems;

(1) Objectives.

(A) Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

(2) Policies.

(A) Improve the technical basis for natural resource management;

(B) Preserve valuable coastal ecosystems of significant biological or economic importance;

(C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and

(D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.

(3) Guidelines.

(A) "Valuable coastal ecosystems" are those ecosystems which are of significant biological or economic importance. Coastal ecosystems of significant biological or economic importance are those ecosystems that (1) are scarce or limited to specific geographic areas, (2) are especially vulnerable or susceptible to alteration and destruction, (3) provide habitats for commercial or recreational resources and (4) demonstrate a low potential for regeneration or are isolated from similar ecosystems that would

enable regneration. Such ecosystems include, but are not limited to:

(i) terrestrial areas dominated by coastal strand ecosystems which provide habitat for or buffer the habitat of threatened or endangered native avifauna;

(ii) perennial streams, anchialine pools, brackish water lakes, and estuaries that are dominated by native aquatic fauna and provide habitat for or buffer the habitat of threatened or endangered native aquatic species, and other water bodies which are vital to the life support of threatened or endangered seabirds or water birds; and

(iii) turtle nesting beaches.

(B) The Department of Health and the Department of Land and Natural Resources, in consultation with appropriate Federal, State, and County agencies shall adopt joint regulations governing minimum stream flow levels in all perennial streams of high natural quality. Such regulations shall be adopted pursuant to Chapter 91 and shall reflect state water quality standards as well as the state's interest in preserving adequate supplies of water.

(C) In any case where water quality may be affected or where point or non-point sources of pollution may be involved, all agencies will refer such matters to the Department of Health for its determination.

(D) The Department of Health, in its regulation of injection wells, cesspools, soil-disturbing activities and other non-point sources of pollution, shall protect the recreational value of estuaries, embayments and other ecosystems with poor water circulation.

(f) Economic uses;

(1) Objectives.

(A) Provide public or private facilities and improvements important to the State's economy in suitable locations.

(2) Policies.

(A) Concentrate in appropriate areas the location of coastal dependent development necessary to the State's economy;

(B) Insure that coastal dependent development such as harbors and ports, visitor industry facilities, and energy generating facilities are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:

(i) Utilization of presently designated locations is not feasible;

(ii) Adverse environmental effects are minimized; and

(iii) Important to the State's economy.

(3) Guidelines.

(A) "Coastal dependent development" means harbors and ports, visitor industry facilities (including associated facilities), energy generating facilities, aquaculture operations and any other development for which it can be demonstrated that siting in the coastal zone is essential if it is economically feasible; provided, however, that this shall not include housing in presently undeveloped areas unless the public good requires such siting or unless such housing is associated directly to a coastal dependent development.

(B) Coastal development shall be concentrated to the extent necessary to preserve scenic, open space, recreational, natural and historic resources determined to be significant under this program unless such concentration would result in significant detrimental effects to one or more of the developments in that area.

(C) The Counties in their General Plans and related documents and ordinances shall designate areas appropriate for coastal dependent developments. Wherever possible consultation with affected agencies and individuals is encouraged. In designating these areas the counties shall use the objectives, policies and guidelines to determine which resources must be preserved and shall additionally preserve such additional areas as are necessary to provide for future land management decisions.

(D) All agencies shall use the State Plan as enacted by the Legislature in determining the importance of a particular development to the State's economy.

(E) Agricultural uses, especially sugar cane and pineapple shall be given the highest priority unless alternate uses are clearly in the long-term economic interests of the State.

(F) All agencies shall minimize the establishment of isolated hotel and resort developments unless such developments can be shown to be economically viable and not in conflict with the economic or environmental resource values in the area.

(G) In siting energy generating facilities, agencies shall consult the State Plan and allow coastal use only to the extent that the facility is in compliance with the energy resource goals of the State.

(g) Coastal hazards;

(1) Objectives.

(A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

(2) Policies.

(A) Develop and communicate adequate information on storm wave, tsunami, flood, erosion, and subsidence hazard;

(B) Control development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard;

(C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(D) Prevent coastal flooding from inland projects.

(3) Guidelines

(A) "Shoreline erosion hazard areas" means lands inland of the shoreline which are likely to be transformed into lands seaward of the shoreline at any time within a period of fifty years as a result of natural processes.

(B) Pending amendments based on studies or appeals, maps of shoreline erosion hazard areas shall initially include all lands and waters up to and including 150 feet inland of the shoreline at all beaches.

(C) Within one year of the effective date of this Act, the county planning departments, in consultation with the United States Geological Survey and the Department of Planning and Economic Development, shall determine and adopt maps of coastal areas subject to relatively high risk of catastrophic subsidence as rules and regulations pursuant to Chapter 91.

(D) The Department of Planning and Economic Development and State and county civil defense agencies shall support programs to educate the public about the location of areas that might need to be evacuated because of tsunami, storm waves, or floods. The Department of Planning and Economic Development

and State and county civil defense agencies shall also support programs to educate the public about the reasons for regulating development in areas subject to storm wave, tsunami, flood, erosion, and subsidence hazard.

(h) Managing development;

(1) Objectives.

(A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

(2) Policies.

(A) Effectively utilize and implement existing law to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements;

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the general public to facilitate public participation in the planning and review process.

(3) Guidelines.

(A) All government agencies in the review and revision of rules, regulations, and procedures, shall keep

in mind the goals of simplifying permit application requirements and the prompt processing of those applications.

(B) Government agencies shall enforce all existing laws, ordinances, rules and regulations pertaining to the prevention or prohibition of unauthorized structures and the establishment of residences on shoreline lands and waters, especially within the Shoreline Setback area.

(C) All government agencies shall establish where possible, similar time limits for the consideration of permit applications.

(D) Government agencies should review all ordinances, rules, regulations, pertaining to "coastal" related activities to insure the greatest degree of clarity, uniformity and consistency possible. Effort should be made to eliminate conflicting rules and regulations between or within agencies.

(E) Within 1 year, all agencies shall develop explicit guidelines for data requirements for all permits within their jurisdiction and the rationale for such guidelines.

(F) All agencies shall encourage public participation by holding public information meetings, especially at the locations of the projects, early in the

planning and review process of significant coastal developments.

A BILL FOR AN ACT

RELATING TO COASTAL ZONE MANAGEMENT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Findings and Purpose

SECTION 2. Section 205A-26, Hawaii Revised Statutes, is amended to read as follows:

"Section 205A-26. Guidelines. (a) In implementing this part, the authority shall adopt the following guidelines for the review of developments proposed in the special management area:

(1) All Development in the special management area shall be subject to reasonable terms and conditions set by the authority in order to ensure;

(A) Adequate access, by dedication or other means, to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles.

(B) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(C) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize advserse effects upon special management area resources.

(D) Alterations to existing land forms and vegetation, except crops, and construction of structures shall cause minimum adverse effect to water resources and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

(E) Provisions are made to require that where unanticipated historic resources are discovered, development is to be halted at least long enough to analyze the site and to undertake reasonable mitigation measures.

(2) No development shall be approved unless the authority has first found:

(A) That the development will not have any substantial adverse environmental or ecological effect, except as such advserse effect is clearly outweighed by public health and safety. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options; and

(B) That the development is consistent with the findings and policies set forth in this part [.];

(C) That scenic resources on the site or adjacent areas have been identified and that the effect of the development on those resources as well as on the public's view to and along the shoreline has been explained; and

(D) That historic resources are not found on the property or that adequate mitigation measures have been taken.

(3) The authority shall seek to minimize, where reasonable:

(A) Dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(B) Any development which would reduce the size of any beach or other area usable for public recreation.

(C) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management areas and the mean high tide line where there is no beach.

(D) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.

(E) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and

fishing grounds, wildlife habitats, or potential or existing agricultural uses of land.

(4) No development shall be allowed in coastal areas subject to a high rise of catastrophic subsidence, rock falls, and landslides, if the development is;

(A) Any new lodging or dwelling unit, regardless of whether or not it is part of a larger development;

(B) Any public development required to obtain a special management area permit which in the judgement of the authority would not provide benefits outweighing the rise of public costs following catastrophic subsidence, rock falls, or landslides; and

(C) Any private development required to obtain a special management area permit unless conditions are imposed to ensure that no person shall be reimbursed by public or publicly subsidized insurance or public grants for property damage caused by catastrophic subsidence, rock falls, or landslides.

(b) Guidelines adopted by the authority shall be consistent with the coastal zone management program objectives, and policies, of this chapter and the guidelines enacted by the Legislature."

SECTION 3. Section 205A-29, Hawaii Revised Statutes, is amended as follows:

"Section 205A-29. Procedure. (a) The authority in each county shall adopt, prior to December 1, 1975 and may amend pursuant to Chapter 91, the rules, regulations and procedures necessary for application of permits and hearings. The authority may require a reasonable filing fee. The fee collected shall be used for the purposes set forth herein.

(b) [A hearing shall be set no less than twenty-one nor more than ninety days after the date on which the application is filed, unless the ninety-day period is waived by the applicant.] The authority shall give adequate notice to individuals whose property rights may be adversely affected, and written public notice once in a newspaper of general circulation in the county in which the area is situated and once in a newspaper of general circulation in the State. [at least twenty days in advance.] The notice shall state that the application has been filed and [The notice] shall state the nature of the proposed development for which a permit application is made. [and of the time and place of the public hearing.]

The notice shall also state that a public hearing will be held if requested by any member of the public. A hearing shall be held if requested by the county planning department of the county in which the development is located.

If requested, the hearing shall be held no less than twenty-one nor more than sixty days after the last public notice. The authority may bring the parties together to attempt to resolve the issues before the hearing. With the consent of all parties, the hearing can be cancelled at any time.

Any such hearing shall when possible be held jointly and concurrently with an environmental impact statement hearing, if such hearing is held under Chapter 343. In counties with council districts, the hearing shall be held in the council district in which the development is proposed.

(c) The authority shall act upon an application within sixty days of receipt or if a hearing is held, within thirty days after the conclusion of the hearing, unless an extension of either deadline has been agreed to by the applicant. Such action shall be final, unless otherwise mandated by court order when a judicial review is sought. [pursuant to Chapter 91.]

(d) No county or state department authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received from the authority, in accordance with the procedures adopted pursuant to this part.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This Act shall take effect upon approval.